

**HIGHWAY CONSTRUCTION FACTORS GROUP
ATTACHMENT 18 PART A
NEW YORK SPECIFICATIONS FOR RESTRICTING BRIDGE
LOADING DURING CONSTRUCTION**

NEW YORK SPECIFICATIONS FOR BRIDGE LOADING

From: Art Yannotti [ayannotti@dot.state.ny.us]
Sent: Monday, October 29, 2007 5:22 AM
To: Walsh Daniel
Subject: Re: Restriction of overweight loads and equipment
(including stockpiling of raw material) on structures

Dan,

I have attached a pdf file containing NYSDOT's Standard Specifications for Construction and Materials. The applicable general provisions are contained in Sections 105-01, 107-05 and 105-12.

Art Yannotti
Director, Structures Design Bureau

>>> "Walsh Daniel" <daniel.walsh@ntsb.gov> 10/26/07 10:52 AM >>>
Art,

As we discussed on the telephone, can you please provide me New York State DOT's policy on restriction of overweight loads and equipment (including stockpiling of raw material) on structures. Please call me at (817) 652-7844 if you have any questions. Thank you.

Dan Walsh, P.E.
National Transportation Safety Board

>>> "Walsh Daniel" <daniel.walsh@ntsb.gov> 10/26/07 10:52 AM >>>
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As we discussed on the telephone, can you please provide me New York State DOT's policy on restriction of overweight loads and equipment (including stockpiling of raw material) on structures. Please call me at (817) 652-7844 if you have any questions. Thank you.

Dan Walsh, P.E.
National Transportation Safety Board

Section 100

GENERAL PROVISIONS

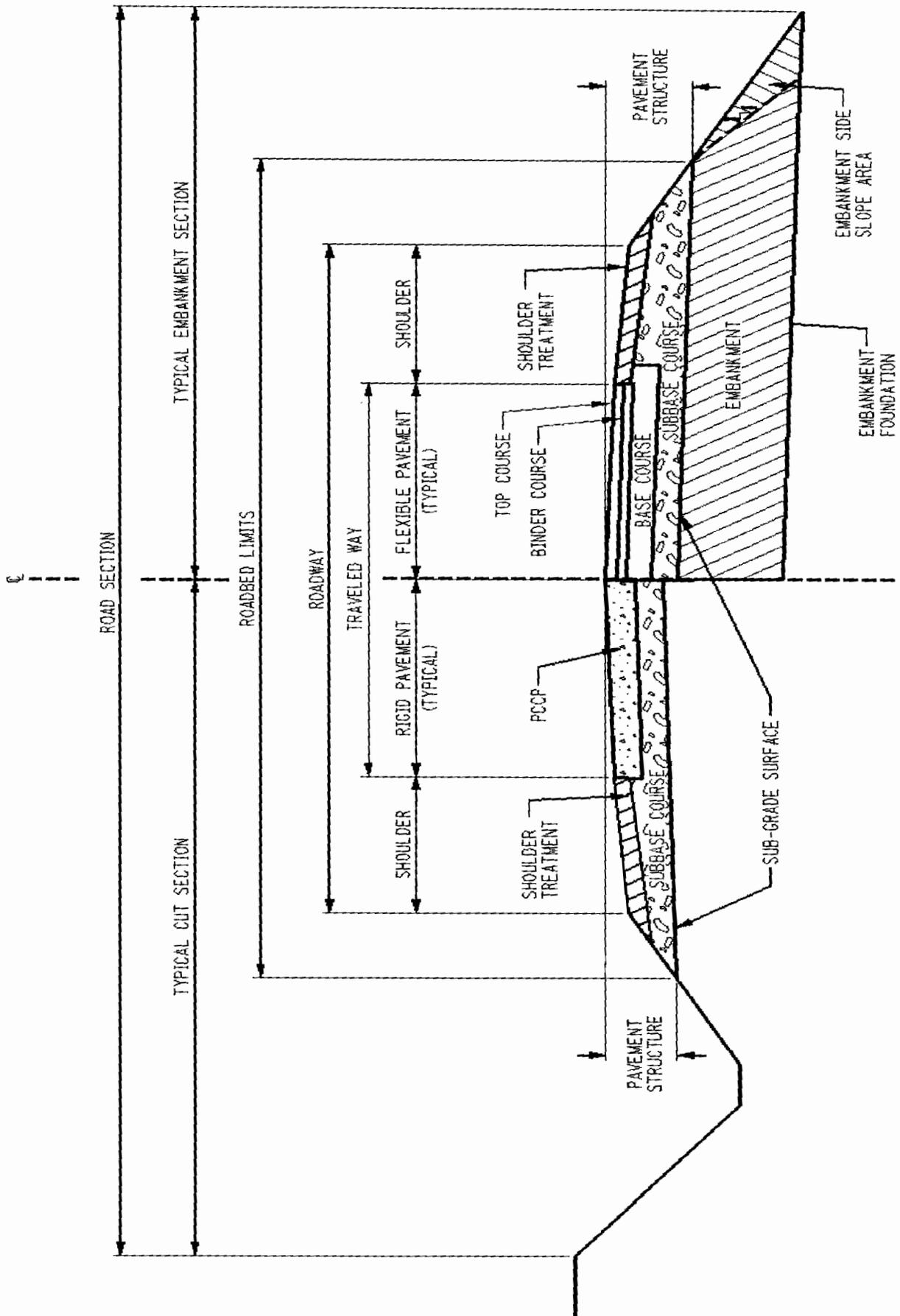
SECTION 101 - ABBREVIATIONS AND DEFINITIONS OF TERMS

Wherever in these specifications or in other contract documents the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

101-01 ABBREVIATIONS OF TERMS.

Wherever the following abbreviations are used in these specifications or on the plans, they are to be construed the same as the respective expressions represented. Some of these abbreviations may be acronyms and some may appear with periods.

AAN	- American Association of Nurserymen
AASHTO	- American Association of State Highway and Transportation Officials
AISI	- American Iron and Steel Institute
ANSI	- American National Standards Institute, Inc
APA	- Adirondack Park Agency
AREA	- American Railway Engineering and Maintenance-of-Way Association
ASME	- American Society of Mechanical Engineers
ASTM	- American Society for Testing and Materials
AWPA	- American Wood-Preservers Association
AWWA	- American Water Works Association
AWS	- American Welding Society
CADD	- Computer Aided Design and Drafting
CPM	- Critical Path Method
CFR	- Code of Federal Regulations
CRU	- Contract Review Unit
DCED	- Deputy Chief Engineer for Design
DCES	- Deputy Chief Engineer for Structures Design and Construction
DCETS	- Deputy Chief Engineer for Technical Services
EEl	- Electrical Engineering Institute
EPA	- U.S. Environmental Protection Agency
FHWA	- Federal Highway Administration
MM	- Materials Method
MP	- Materials Procedure
MSDS	- Material Safety Data Sheet
MURK	- Manual for Uniform Record Keeping
MUTCD	- Manual of Uniform Traffic Control Devices
NEMA	- National Electrical Manufacturers Association
NYCRR	- Official Compilation of Codes, Rules and Regulations of the State of New York
NYSDEC	- New York State Department of Conservation
NYSDEL	- New York State Department of Labor
OEODC	- Office of Equal Opportunity Development and Compliance
OSHA	- Occupational Safety and Health Administration, US Department of Labor
PCCM	- New York State Prestressed Concrete Construction Manual
PCCP	- Painting Contractor Certification Program
RME	- Regional Materials Engineer
SCM	- New York State Steel Construction Manual
SPN	- Standardized Plant Names adopted by The American Joint Committee on Horticultural Nomenclature
SSPC	- Steel Structures Painting Council
VECP	- Value Engineering Change Proposal
USACOE	- U.S. Army Corps of Engineers
USC	- United States Code



101-02 DEFINITIONS OF TERMS.

Wherever the following terms are used in these specifications or on the plans, they are to be construed the same as the respective definitions represented.

A+B Bidding. A+B Bidding is an time-related form of bidding used by the Department for contracts that are time sensitive, either in overall contract duration, or the duration of a task or tasks. The total contract bid price consists of the amount bid that will be paid for the work (the “A portion”), plus the number of days for completion of the specified work multiplied by the user cost specified in the contract documents, (the “B portion”).

Addenda. Supplemental additions, deletions, and modifications to the provisions of the Standard Specifications which are in effect on the date of advertisement for receipt of bids.

Amendment. A formal alteration by addition, deletion or modification of a proposed contract, issued subsequent to the initiation of the sale of proposals and prior to the opening of bids.

Approved List. List of materials, equipment, Manufacturers, Fabricators or Material Suppliers approved by the Materials Bureau under a particular specification. The Approved Lists are published periodically and are available from the Materials Bureau or on the Department web site.

Award. The decision of the Department to accept the proposal of the lowest responsible bidder for the work, subject to the execution and approval of a satisfactory contract therefore and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.

Base Line Data. The relevant contract specific information and engineering data used to develop the contract plans and proposal. The relevant information and data will be listed as available on Form CONR-9 *Supplemental Information Available to Bidders* included in the contract proposal.

Bid Deposit. The security furnished by the bidder with their proposal for a contract, as guarantee the bidder will enter into a contract for the work if their proposal is accepted.

Bidder. An individual, firm or corporation formally submitting a proposal for the work contemplated acting directly or through a duly authorized representative.

Bridge. The term “bridge” shall apply to any structure whether single or multiple span construction with a clear span in excess of 6 096 mm (legally 20 feet) when measurement is made horizontally along the center line of roadway from face to face of abutments or sidewalls immediately below the copings or fillets; or, if there are no copings or fillets, at 152 mm (6 inches) below the bridge seats or immediately under the top slab, in the case of frame structures. In the case of arches, the span shall be measured from spring line to spring line. All measurements shall include the widths of intervening piers or division walls, as well as the width of copings or fillets.

Calendar Day. Every day shown on the calendar. The calendar day begins at 12:00AM (Midnight).

CFR. Code of Federal Regulations published by the U.S. Office of the Federal Register, written TT CFR PPP.SS. TT refers to the Title, PPP refers to the Part and SS refers to the section. For example: 29 CFR 1926.1 refers to Title 29, Code of Federal Regulations, Part 1926, Section 1. Code of Federal Regulations are available on the internet at <http://www.gpoaccess.gov/cfr/index.html>

Chief Engineer. The Chief Engineer of the New York State Department of Transportation.

Closed Drainage System. A collection system of enclosed channels for stormwater runoff which carries water to a discharge point. Typically has drainage structures for inlet(s) and may include intermediate drainage structures at junction points.

Commissioner. The Commissioner of the New York State Department of Transportation.

Comptroller. The head of the New York State Office of the State Comptroller.

Contract. A binding agreement between the Department and a contractor to complete a specified scope of work. The contract includes, but is not limited to an executed contract agreement, a set of contract documents and contract bonds.

Contract Agreement. The agreement covering the performance of the work and furnishing of labor and materials in the construction of the work in conformance with the requirements of the contract documents.

Contract Bond. The approved form of security, executed by the Contractor and its Surety or Sureties, guaranteeing complete execution of the contract and all supplemental agreements pertaining thereto and the payment of all legal debts pertaining to the construction of the contract.

Contract Documents. The contract documents shall include the advertisement for proposals; the contract proposal, including Special Notes and Special Specifications contained therein; the Contractor's proposal; the Disadvantaged/Minority/Women's Business Enterprise (D/M/WBE) participation goals; the equal employment opportunity (EEO) participation goals; the contract agreement; the Base Line Data; Standard Specifications, including all addenda thereto identified in the contract proposal; the Standard Sheets; the plans; any amendments to the contract proposal or the contract plans issued prior to the date of receipt of proposals; and all provisions required by law to be inserted in the contract whether actually inserted or not.

Whenever separate publications are referenced in the Contract Documents it shall mean those, as amended, which are current on the date of advertisement for bids.

Contract Limits. The limits shown in the contract documents, in which all work occurs, including advanced signing and detours covered under an individual contract. The Contractor shall be responsible for the highway within the contract limits. For contracts with multiple sites, this may be defined as a single larger limit if the sites are in close proximity, or as multiple sets of contract limits if the sites are widely separated. On-site contract work cannot be conducted outside the contract limits.

Contract Pay Item. A specifically described unit of work for which a price is provided in the contract.

The basic format of a standard specification contract pay item number is a three digit root number, a decimal point, and then either a two, four, or six digit extension number (XXX.XX, XXX.XXXX, or XXX.XXXXXX). The three digit root number denotes the standard specifications section to which the contract pay item relates (i.e. 564 – Structural Steel).

The format of a special specification contract pay item is the same as the standard specification contract pay item number, but a two digit origin code number (that was previously shown as a prefix) is added as a suffix. The special specifications will be contained in the contract proposal. The origin code number (RR) denotes the NYSDOT Region, Division, or Group that originate the special specification. Regardless of the length of the extension number, the suffix is always in the seventh and eighth decimal place after decimal point. For special specification contract pay item numbers with only a two or four digit extension number, blank spaces, hyphens or lowercase "b"s are used to bridge the space between the end of the extension number and the origin code number (XXX.XX---RR or XXX.XXXX--RR or XXX.XXXXXXRR or XXX.XXbbbbRR or XXX.XXXXbbRR or XXX.XX RR or XXX.XXXX RR).

Contractor. The individual, firm, or corporation undertaking the execution of the work under the terms of the contract and acting directly or through his, her, their, or its agents or employees.

Culvert. An enclosed channel open at both ends carrying water from a stream or water course through an artificial barrier such as a roadway embankment. The term "culvert" shall apply to any structure whether of single or multiple span construction with an interior width of 6096 mm (legally 20 feet) or less when measurement is made horizontally along the center line of roadway from face to face of abutments or sidewalls immediately below the copings or fillets, or, if there are no copings or fillets, at points 152 mm (6 inches) below the bridge seats or immediately under the top slab in the case of frame structures.

In the case of arches, the span shall be measured from spring line to spring line. All measurements shall include the widths of intervening piers or division walls, as well as the widths of copings or fillets.

Day. A calendar day unless otherwise defined or modified.

Department. The New York State Department of Transportation, including staff and managers who have been delegated certain contractual and technical authority by the Commissioner. The Department maintains a web site at *www.dot.state.ny.us*.

Departmental Geotechnical Engineer. The Regional Geotechnical Engineer or his/her authorized representative, or a Geotechnical Engineer of the Geotechnical Engineering Bureau acting at the request of the Regional Geotechnical Engineer.

Departmental Engineering Geologist. An Engineering Geologist of the Geotechnical Engineering Bureau authorized by the Director of Geotechnical Engineering Bureau to perform the duties required under these specifications.

Director, Construction Division. The Director of the Construction Division of the Department of Transportation.

Division. Any of the divisions of the New York State Department of Transportation.

Drainage Structure. A structure that collects and/or redirects stormwater runoff, including catchbasins, manholes, leaching basins and similar structures, but not structures for sanitary sewers.

Employee. Any person working on the project mentioned in the contract documents, and who is under the direction or control, or receives compensation from the Contractor or Subcontractor.

Engineer OR Engineer-In-Charge. The Engineer representing the Department of Transportation having direct supervision of the execution of the contract under the direction of the Regional Director.

Equipment. All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

Erosion and Sediment Control. Erosion and sediment control is any action taken or item used as part of a contract or as a separate action to minimize the destructive effects of wind and water on surface soil. The use and placement of berms and dams, rolled erosion control products, grasses, sod, mulches, slope drains, sediment basins and drainage systems may be temporary and used throughout construction, or permanent and installed for the anticipated life of the facility.

Extra Work. Work not provided for in the contract as awarded but found essential to the satisfactory completion of the contract within its intended scope.

Fabricator. A Fabricator assembles, constructs or otherwise substantially alters materials or supplies into assemblies, components or finished items for inclusion into the work prior to resale.

Federal-Aid. Joint cooperative construction or reconstruction of State highways and bridges or grade crossing elimination work with monies contributed to the State by the Federal Government under Title 23, United States Code, Highways, and amendments thereto.

Federal-Aid Project. An identification applied to federally aided work for the purpose of the records of the FHWA. Federal-Aid contracts are denoted "F.A. Project" on the proposal cover and on the title page.

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Field Change Order (FCO). A contract contingency that allows for the timely payment of authorized extra work that is necessary to fulfill the intent of the plans and specifications without the preparation of an order-on-contract during construction. FCO funds are limited to the amount in the item at award and shall not be increased nor replenished. A “clean-up” order-on-contract is processed after contract final acceptance to reconcile all FCO payments.

Final Agreement. Agreement between the State of New York, Department of Transportation and the Contractor, stating the net increase or decrease of the cost of work completed from the total cost of work authorized under the contract. The Final Agreement includes the Final Estimate as an attachment.

Geotechnical Engineering Bureau. The Department’s Geotechnical Engineering Bureau has the responsibility for providing all Geotechnical Engineering Services including laboratory testing of earthwork materials.

Highway. The whole strip of land bounded by the right of way lines.

Incentive/Disincentive (I/D). Predetermined adjustment to the total contract amount for each day or portion thereof that the work is completed ahead of or behind a specific milestone, phase or contract completion date.

Inspector. The Department of Transportation representative assigned to inspect methods and materials relating to work both on and off the site of the contract.

Land Surveyor. A Land Surveyor licensed or otherwise authorized to practice surveying under Article 145 and registered or otherwise authorized under Article 130 of the New York State Education Law.

Landscape Development. Landscape development is any development or item used as part of a project or as a separate action through the use, placement and management of land and elements for aesthetic enhancement, such as decorative surfaces and wall faces, benches, waste receptacles, tables, etc., and plant materials consistent with a specific landscape architectural design plan.

Landscaping. Landscaping is the use and placement of plant materials (trees, shrubs, vines and certain ground covers) consistent with a landscape architectural design plan. Planting vegetation for screening and erosion control purposes does not constitute landscaping.

Lane Rental. An amount identified as the value of a lane or lanes to be occupied by the Contractor in performance of the contract. The total amount bid for lane rental is the total value that can be used by the Contractor in performance of the contract. If additional value is used by the Contractor, that amount will be deducted from the payments to be made to the Contractor.

Laying Length of Pipe. Meters (laying length) of pipe shall be measured by multiplying the number of whole units by the nominal length of each unit and adding thereto the length of any fractional units incorporated in the work. The nominal length of a unit or fractional unit shall be the inside measured length from butt end to butt end and exclusive of the bell or groove on the female end.

Major Item. Any contract pay item for which the original unit bid price multiplied by the original item quantity exceeds the following minimum major item value based on total contract bid price or 2% of the total contract bid price, whichever is greater:

Total Contract Bid Price	Minimum Major Item Value
≤ \$1,000,000.	\$20,000
> \$1,000,000 - \$5,000,000	\$50,000
> \$5,000,000 - \$20,000,000	\$200,000
> \$20,000,000	\$500,000

NOTE: The total contract bid price shall not include the value of any Field Change Order item. For contracts subject to A+B Bidding, the total contract bid price will include only the “A” portion of the bid. For contracts containing Incentive/Disincentive

provisions, Lane Rental provisions, or any similar provisions, the total contract bid price will exclude any incentive/disincentive, lane rental, or similar items.

Manual for Uniform Record Keeping on Construction Contracts (MURK). Manual(s) containing uniform contract record keeping forms and procedures to be followed by the Engineer, current on the date of contract award. MURK Part 1A is the Contract Administration Manual (CAM), Part 1B is the Construction Inspection Manual (CIM), Part 1C is the Safety and Health Program Manual, and Part 2A is the Materials Inspection Manual (MIM). The MURK manuals are guidance documents, and are not a part of the contract documents.

Manual of Uniform Traffic Control Devices (MUTCD). Title 17, *Official Compilation of Codes, Rules and Regulations of the State of New York*, Chapter V, (17 NYCRR Chapter V) *Uniform Traffic Control Devices and Appendixes*, as amended, which is current on the date of advertisement for bids. The Manual of Traffic Control Devices prescribes standards for the design, location, use and operation of traffic control devices.

Manufacturer. A Manufacturer operates or maintains a factory or establishment that produces, on the premises, materials or supplies of the general character described by the specifications.

Material. Any approved material acceptable to the Commissioner and conforming to the requirements of the specifications.

Material Supplier. A Material Supplier, also known as a regular dealer, is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A Material Supplier is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. A Material Supplier who deals in bulk items such as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Packagers, brokers, manufacturer's representatives or other persons who arrange or expedite transactions are not Material Suppliers.

Materials Bureau. The Department's Materials Bureau has a responsibility in the quality assurance program for materials to be used on the contract and maintains a testing facility in Albany, New York.

Materials Details. That information, unique to a particular product, that is necessary to adequately identify it or to describe the proper handling, installation, or use of that product.

Metric Ton. Metric ton of 1000 kilograms. The metric ton is also referred to as the Megagram (Mg).

Minor Item. Any contract pay item that does not meet the definition of a Major Item.

NCHRP 350. National Cooperative Highway Research Program Report 350 *Recommended Procedures for the Safety Performance Evaluation of Highway Features*. NCHRP 350 presents procedures for the evaluation of roadside safety features and appurtenances, by vehicle crash testing or in-service evaluation.

Near. When used in reference to an underground facility, within 4.5 m (15 feet) of the outside perimeter or diameter of an underground facility or its encasement.

NYCRR. Official Compilation of Codes, Rules and Regulations of the State of New York, written TT NYCRR PPP. TT refers to the Title, and PPP refers to the Part of the official compilation.

One-Call Notification System. Organization(s) whose purpose is to establish and carry out procedures to protect underground facilities from damage due to excavation and demolition, including receiving notices of intent to perform excavation and/or demolition and transmit the notices to the operators of underground facilities in the specified area.

Order on Contract. Written order issued by the Commissioner covering contingencies, extra work, deductions, increases or decreases and additions, alterations or omissions to the plans or specifications.

Owner/Operator. A single individual who operates a vehicle or other piece of equipment as an independent contractor and does not have any employees. The Owner/Operator is responsible for all costs incurred in the ownership and operation of the vehicle/equipment including, but not limited to: licensing/registration, insurance, taxes, permits, repairs and fuel. Payments to the Owner/Operator are for both the vehicle/equipment and an operator, and may be made on a time, distance, load or other basis.

Partial or Monthly Contract Payments. Payments to the Contractor for work satisfactorily performed, prescribed by subdivision 7, section 38 of the Highway Law.

Payment Limit. A payment limit defines the boundary beyond which no quantities will be measured for payment. Whenever payment limits are indicated, only the work which is actually directed and completed within these limits will be measured and computed for payment. Payment limits may be revised in writing by the Engineer prior to performing the work.

Payment Line. Defines the exact line from which the work quantity will be computed. Whenever payment lines are indicated, quantities representing work completed will be computed from these lines only. No other lines or locations will be used to compute quantities. Payment lines may be revised with the recommendation of the Engineer through an approved order-on-contract prior to performing the work.

Plans. The official contract drawings and applicable standard sheets, which show the location, character, dimensions and details of the work to be performed.

Prestressed Concrete Construction Manual (PCCM). The New York State Prestressed Concrete Construction Manual published by the Structures Design and Construction Division, which is current on the date of advertisement for bids. The Prestressed Concrete Construction Manual is a mandatory supplement to the contract documents for contracts which include Prestressed Concrete Units (Structural).

Professional Engineer. A Professional Engineer licensed or otherwise authorized to practice engineering under Article 145 and registered or otherwise authorized under Article 130 of the New York State Education Law.

Project. The construction work to be performed under one or more construction contracts to complete an undertaking.

Project Limits. The limits in which the improvements associated with a specific project have been designed.

Proposal. The offer of the bidder for the work, when executed and submitted on the prescribed form.

Proposal Form. The approved form on which the Department requires formal bids to be prepared and submitted for the work.

Reasonable Close Conformity. Reasonable close conformity means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonable close conformity means compliance with such tolerances. Without detracting from the complete and absolute discretion of the Engineer to insist upon such tolerances, the Engineer may accept variations beyond such tolerances as reasonable close conformity where they will not materially affect the value or utility of the work and the interests of the State.

Region. One of eleven geographical subdivisions of the State used to designate or identify the location of the proposed work.

Regional Director. The Director, acting through the Commissioner, who is delegated the authority and responsibility to execute the total Department prescribed work plans for his/her respective region.

Right of way or R.O.W. A general term denoting land, property or interest therein, usually in a strip, acquired for or devoted to a highway.

Roadbed. The graded portions of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

Roadway. The portion of a highway included between the outside edges of the shoulders.

Road Section. That portion of a highway included between the top of the slope in cut and the bottom of slope in fill.

Service. For the purposes of determining whether subcontractor approval is required, and for determining reimbursement for extra work, a Service is specialized work consisting of less than an entire contract pay item, conducted for an aggregate of less than 5 days, provided to the Contractor for a fee or other basis not generally accounted for through labor, materials and equipment billing. Services include, but are not limited to professional fees, testing fees, dumping fees, utility charges, fuel supply delivery, vehicle towing called out for the public, and crane lifting operations.

Shoulder. The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

Site. The specific area adjacent to and including the area upon which construction work is to be performed. Generally such area may be considered as defined by the right of way or property made available to the Contractor for construction operations.

Special Notes. Special directions, provisions, or requirements peculiar to the contract under consideration.

Specifications. The body of directions, requirements, etc., contained in this present volume, together with all special specifications and documents of any description and agreements made (or to be made), pertaining to the methods (or manner) of performing the work or to the quantities and quality as shown by the test records of accepted materials to be furnished under a contract.

Within these specifications there are two formats for numbering. One is used for the specification sections and subsections portion and the other for contract pay items. (See definition - Contract Pay Item.)

A specification section is written using the word Section xxx *Section Title* (e.g., Section 564 *Structural Steel*) and subsections are written with a subsection symbol, the core section number, a dash, another and may include a decimal (e.g., §107-05 *Safety and Health Requirements* or §608-3.03E.2.).

Standard Sheets. The standard drawings, issued by the Department, approved for repetitive use, showing details to be used where appropriate. Applicable standard sheets are referenced on the Contract Plan Title Sheet, and comprise a part of the Contract Documents. Standard sheets are available on the NYSDOT web site in both Adobe Acrobat (pdf) and Bentley Systems MicroStation (dgn) formats.

State. When used, means the State of New York, represented by the Department of Transportation through the Commissioner of Transportation.

Steel Construction Manual (SCM). The New York State Steel Construction Manual published by the Structures Design and Construction Division, which is current on the date of advertisement for bids. The Steel Construction Manual is a mandatory supplement to the contract documents for contracts which include contract pay items which require the Contractor to furnish or rehabilitate structural metals.

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Structures. Bridges, culverts, retaining walls, cribbing, manholes, drainage structures, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other features which may be encountered in the work and not otherwise classed herein.

Subcontractor. Any individual, firm or corporation to whom the Contractor, with the written consent of the Department, sublets any part of the contract.

Surety. The corporate body bound with and for the Contractor, guaranteeing the full and complete performance of the contract, and for the payment of all debts pertaining to the work.

Test. Methods adopted by the Commissioner to ascertain the quality, character and acceptability of materials and processes utilized in performing the contract.

Tolerance Zone. When used in reference to an underground utility, the tolerance zone shall be a distance of 0.6m on either side of the designated centerline, plus one-half of the utility diameter, if the utility diameter is known.

Traveled Way. Portion of the roadway for the movement of vehicles, exclusive of the shoulders. Through traveled way is the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Utility. Person, corporation, municipality or public authority engaged in the distribution of electricity, gases, petroleum products, water, steam, the collection of wastewater, the operation of traffic control systems, or the provision of telecommunication service. For the purposes of these Specifications, the term Utility will apply to organizations that operate utilities owned by others.

Work. Work shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the contract and the carrying out of all the duties and obligations imposed by the contract.

Work Day. A calendar day, on which weather and other conditions not under the control of the Contractor, will permit construction operations on the principal item or items of work which would normally be in progress at that time to proceed for the major part of the day. Work days exclude Sundays, and days on which the Contractor is specifically prohibited from working, as identified in the contract documents. Days on which the Contractor is prohibited from closing a lane or lanes or impeding traffic are considered work days unless otherwise noted in the contract documents.

For the purposes of determining allowable time periods for submittals, reviews and approvals, State recognized public holidays are not considered work days. The public holidays observed by the State are as follows:

New York State Public Holidays	
New Years Day	January 1
Martin Luther King Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25

If the holiday occurs on a Saturday, it will be observed the Friday before. If the holiday occurs on a Sunday, it will be observed the Monday after.

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**102-01 LOCATION OF REGIONAL OFFICES.**

The Regional Offices and counties covered are located as follows:

Region Number	Including Counties:			Regional Office Address
1	Albany Rensselaer Warren	Essex Saratoga Washington	Greene Schenectady	NYS Office Building 328 State Street Schenectady, N.Y. 12305 (518) 388-0388
2	Fulton Madison	Hamilton Montgomery	Herkimer Oneida	NYS Office Building 207 Genesee Street Utica, N.Y. 13501 (315) 793-2447
3	Cayuga Oswego	Cortland Seneca	Onondaga Tompkins	NYS Office Building 333 E. Washington St. Syracuse, N.Y. 13202 (315) 428-4351
4	Genesee Ontario Wayne	Livingston Orleans	Monroe Wyoming	1530 Jefferson Road Rochester, N.Y. 14623 (585) 272-3310
5	Cattaraugus Niagara	Chautauqua	Erie	NYS Office Building 100 Seneca Street Buffalo, N.Y. 14203 (716) 847-3238
6	Allegany Steuben	Chemung Tioga	Schuylar Yates	NYS Office Building 107 Broadway Street Hornell, N.Y. 14843 (607) 324-8404
7	Clinton Lewis	Franklin St. Lawrence	Jefferson	NYS Office Building 317 Washington Street Watertown, N.Y. 13601 (315) 785-2333
8	Columbia Putnam Westchester	Dutchess Rockland	Orange Ulster	NYS Office Building 4 Burnett Boulevard Poughkeepsie, N.Y. 12603 (845) 431-5750
9	Broome Otsego	Chenango Schoharie	Delaware Sullivan	NYS Office Building 44 Hawley Street Binghamton, N.Y. 13901 (607) 721-8116
10	Nassau	Suffolk		NYS Office Building 250 Veterans Memorial Highway Hauppauge, N.Y. 11788 (631) 952-6632
11	Bronx Richmond	Kings Queens	New York	1 Hunters Point Plaza 47-40 21st Street Long Island City, N.Y. 11101 (718) 482-4526

102-02 EXAMINING THE CONTRACT DOCUMENTS AND THE WORK SITE.

Detailed plans of the work, standard sheets and contract proposals may be examined at the office of the NYS Department of Transportation, Plan Sales Unit, 50 Wolf Road, Albany, New York 12232 (518) 457-2124 and at the Regional Office where the work is located.

The attention of persons intending to make proposals is specifically called to Article 3, *Examination of Documents and Site* of the contract agreement wherein the bidder agrees that it has examined the contract documents and the site of the work and has fully informed itself from personal examination of the same regarding the quantities, character, location and other conditions affecting the work to be performed including the existence of poles, wires, pipes, ducts, conduits, and other facilities and structures of municipal and other public service corporations on, over or under the site. Particular attention is called to contract plans and the contract proposal, which contains special notes and special specifications, which may contain contract requirements at variance with standard specifications and standard sheets and may include information concerning the existence of poles, wires, pipes, ducts, conduits, and other facilities and structures of municipal and other Utilities on, over or under the site.

The Bidder agrees that its proposed contract prices include all costs arising solely from existing conditions shown, or specified in the contract documents including the Base Line Data, and/or readily observable from a site inspection during the bidding period available under this contract, and/or generally recognized as inherent in the nature of the work. The Bidder shall take no advantage of any apparent error or omission in the contract documents.

A. Base Line Data. The Department will make available relevant project specific information and engineering data that were used to develop the contract documents. The material will be listed as available on a form in the contract proposal entitled "Supplemental Information Available to Bidders". The supplemental information could include, for example, earthwork cross section sheets, various subsurface information, record plans, special reports and other pertinent project data. The information or data listed as available on the form can be accessed by the Contractor for inspection or reproduction at the Regional Office where the work is located. This material will be the Base Line Data and together with other contract documents will be used to determine changes to the work. Base Line Data will be consistently provided in all Department projects.

B. Contract Document Components. The following components of the contract documents complement one another in the declining order of precedence listed below. The intent of the contract documents is to include all items/aspects of the work that are necessary for the proper initiation, execution, and completion of the work.

1. Plans.
2. Proposal - Special Notes.
3. Proposal - Special Specifications.
4. Standard Specifications.
5. Standard Sheets.
6. Base Line Data.

C. Subsurface Information. Boring logs and other subsurface information made available for the inspection of bidders were obtained with reasonable care and recorded in good faith by the Department. The subsurface information shown was obtained for State design and estimate purposes. It is made available to bidders so that they may have access to the same information available to the State. It is presented in good faith, but as with all subsurface information it represents only a small fraction of the total volume of material at the site.

The soil and rock descriptions shown are as determined by a visual inspection of the samples from the various explorations unless otherwise noted. The observed water levels and/or water conditions indicated thereon are as recorded at the time of the exploration. These levels and/or conditions may vary considerably, with time, according to the prevailing climate, rainfall and other factors. Interpolation between data points may not be indicative of the actual material to be encountered.

The locations of utilities or other underground man-made features were ascertained with reasonable care and recorded in good faith from various sources, including the records of municipal and other public service corporations, and therefore the location of known utilities may only be approximate. Subsurface utility quality level designations shown in the contract documents are defined in accordance with §107-07E. *Quality Level Designations*.

102-03 COOPERATION BETWEEN CONTRACTORS.

The Department reserves the right to let other contracts in connection with this work. The Contractor acknowledges that, from the contract documents and Base Line Data, it has been informed of such other contracts in the work area. The Contractor has carefully reviewed the contract documents and all other pertinent information made available by the Department that relate to the nature and scheduling of these other contracts that may be awarded and will submit a progress schedule that takes into account the need to coordinate its work with those other contractors. The Contractor shall coordinate its work with the work of these other contractors. There may be other contractors, subcontractors, utilities, or employees of the Department and its authorized representatives working at or adjacent to the work site during the performance of the contract by the Contractor. The Contractor may not have exclusive access to or occupancy of the territory within or adjacent to the limits of the contract. To the extent indicated in the Base Line Data and contract documents, the Department may also require that certain facilities and areas be used concurrently by the Contractor and others. Consistent with that indicated in the Base Line Data and contract documents, the Department will advise the Contractor of the schedules of others. The Contractor should anticipate that its work may be interrupted or delayed from time to time due to the concurrent activities of others.

The Contractor shall cooperate with other Contractors and Utilities and coordinate and arrange the sequence of its work to conform with the work operations of other parties indicated in the Base Line Data. Cooperation and adjustments with the Contractors already engaged and to be engaged upon the site is essential to properly coordinate the construction efforts of all contractors, Utilities, and Subcontractors engaged in the work within and adjacent to the construction area of this contract.

In the event that utility facility adjustments are to be made by a Utility's forces in connection with and during the life of the contract, the Contractor will be required to cooperate with the Utilities and to coordinate and arrange the sequence of its work to conform with the progressive operations of the Utility's work or proposed work.

102-04 PROPOSAL CONTENT.

Each proposal shall specify the correct gross sum, in the manner hereafter described for which the work will be performed according to the plans and specifications and any amendment to the specifications if the same are issued prior to the date of receipt of the proposal, together with a unit price for each of the specified separate items. The bidder's attention is directed to the fact that it cannot exceed three (3) decimal positions in the cents column under unit bid price.

A. Fixed Price Items. Some of the contract pay items may be designated as Fixed Price or Dollars-Cents Items, for which the fixed prices are published in the proposal. These items can be identified in the Itemized Proposal by the words, "Fixed Price: See Specification and §102-04" appearing beneath the description of the item, and preprinted entries in the "Unit Price" and "Bid Amount" columns. The bidder shall not change these entries. Should the amount shown be altered, the altered figures will be disregarded and the preprinted price and amount will be used to determine the total amount bid for the contract.

Some Fixed Price Items indicate the price that will be paid for certain work. These have been prepared taking into account the cost of all labor, materials, and equipment necessary to complete the work including an allowance for overhead and profit. Other Fixed Price Items indicate an estimate of payments, with actual payments to be based on actual costs and provisions of the controlling specification. In either case, payments made under Fixed Price Items shall be in accord with the provisions for the specification for that item.

B. Minimum/Maximum Bid Items. Similarly, one or more contract pay items may be designated as MINIMUM PRICE ITEMS or MAXIMUM PRICE ITEMS. When this is the case, the minimum (or maximum) prices are published in the proposal. These contract pay items can also be identified in the Itemized Proposal by the words "Minimum Bid ___" or "Maximum Bid ___" appearing beneath the description of the item. The price bid for Minimum Price Items shall not be less than the minimum price shown in the Itemized Proposal, but it may exceed that price.

Conversely, the price bid for Maximum Price Items shall be less than, or equal to, the maximum price shown in the Itemized Proposal. In the event a bid is less than the Minimum Price (or more than the Maximum Price) indicated in the Itemized Proposal, the Department will substitute the

appropriate minimum (or maximum) price and make the necessary adjustments to determine the total amount bid.

C. A+B Bidding. The itemized contract proposal provides space to individually list the number of consecutive calendar days for each stage or phase of work subject to A+B Bidding. The Contractor shall enter the number of consecutive calendar days bid for each phase or stage of work subject to A+B bidding individually in the space provided. Bids showing time for completion of B-portion work in excess of the maximum total number of calendar days that can be bid as specified in the Special Note entitled *Description of B-Portion Work* will be adjusted by the Department to the maximum time allowed.

102-05 PROPOSAL SUBMISSION.

Each proposal shall be submitted on the proposal form prepared by the Department for that individual contract. The deadline for submitting a proposal is found in the published notice calling for proposals. Any proposal received after the time specified in the published notice, as modified by any Amendment, will not be accepted. All blank spaces in the proposal form shall be filled in as noted, and no change shall be made in the phraseology of the proposal or in the items mentioned therein. Bidders shall use either black ink or typewriter (black ribbon) in completing the proposal form. Proposals that are illegible or that contain any omission, erasures, alterations, additions, or items not called for in the itemized proposal or that contain irregularities of any kind, may be rejected as informal.

The State is responsible for providing Amendments only to those persons or firms listed in its Plan Sales Ledger as having purchased plans and/or proposals from the Department, and those that made a specific request of the Department for Amendments. Persons or firms that obtain plans and/or proposals from sources other than the Department bear the sole responsibility for obtaining any amendments issued by the Department.

The Bidder shall sign, in the space provided in the proposal form, with its signature. An officer of a corporation or a member of a partnership signing for the bidder, shall place its signature and title after the word "By" under the name of the Contractor. The same procedure shall apply to the proposal of a joint venture by two or more bidders; however, if the signature is by an agent or attorney-in-fact for the joint venturers, then the proposal shall be accompanied by four (4) authenticated copies of the evidence of its authority to act on behalf of all of the joint venturers.

If the proposal is made by an individual, the individual's address shall be given. If the proposal is made by a corporation, the names and addresses of the president, secretary and treasurer shall be given. If the proposal is made by a partnership, the names and addresses of the partners shall be given.

Any proposal which does not contain prices set opposite each of the items for which there is a quantity exhibited in the itemized proposal, or which shall in any manner fail to conform to the conditions of the published notice inviting proposals, will be deemed informal.

102-06 BID DEPOSIT.

THE BIDDER MUST SUBMIT A BID SECURITY WITH EACH BID. Every proposal shall be accompanied by (1) a bid bond or (2) a certified check or (3) a bank cashier's check payable to the State of New York. If the Bidder elects to submit a bid bond, it SHALL be on the Department's Bid Bond Form (CONR 391, a sample of which is included in §102-15, *Sample Form of Bid Bond*) that already contains language representing 25% of the total bid. If the Bidder elects to submit a certified check or bank cashier's check for a bid deposit, it shall be in the amount specified in the bid proposal. The retention and disposition of such bid bond or certified check or bank cashier's check by the Department shall be pursuant to and in conformity with §38(2) of the Highway Law, as amended.

102-07 MODIFICATION OR WITHDRAWAL OF PROPOSAL.

Permission will not be given to modify or explain by e-mail, telephone, letter or otherwise, any proposal or bid after it has been deposited with the Department. No proposal shall be withdrawn or canceled before the time designated for opening such proposals publicly except upon such conditions as the Commissioner may deem to be necessary.

No proposal shall be withdrawn or canceled after the time designated for opening such proposals publicly, except to exercise the option as provided herein. Any bidder or its duly authorized agent who has submitted proposals on more than one project of any one letting may, at its option and upon written

request, withdraw any or all of its additional proposals after the person who opens and reads the bids has announced that such bidder has submitted the lowest proposal on a project for which bids have last been read. When this option is exercised, the proposals for other projects in the letting will be returned to the bidder unopened. No returned proposals will be considered after the bidder has exercised its privilege to withdraw the same. Any bidder exercising the privilege of so withdrawing its bid or bids waives all claims that may arise should it be found that its opened proposal is informal or for any other reason is unacceptable to the Department. The Department will open and read proposals in the order in which they are drawn and not in the order in which the projects are advertised.

102-08 STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS.

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its Subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its Subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any

New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its Subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its Subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct and examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records

shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:

(A) Federal Employer Identification Number And/or Federal Social Security Number.

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(B) Privacy Notification.

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN: In accordance with Section 312 of the Executive Law, if this contract is: (i) a written Agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written Agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written Agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rate of pay or other forms of compensation;

(b) At the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other Agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis or race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b" and "c", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a Contractor or Subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section.

The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the NYS Department of Economic Development's Division of Minority- and Women-Owned Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this subsection, the terms of this subsection shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United State Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any Subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the Subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. PURCHASES OF APPAREL. In accordance with State Finance Law §162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known,

the names and addresses of each Subcontractor and a list of all manufacturing plants to be utilized by the bidder.

20. Contract Termination Provision. The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Laws §139j and §139k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

102-09 STANDARD CLAUSES FOR NON FEDERAL-AID NEW YORK STATE CONTRACTS.

A. MacBride Act Fair Employment Principles. Chapter 807 of the Laws of 1992 require employers doing business in Northern Ireland to employ principles relating to nondiscrimination in employment and freedom of workplace opportunity which would:

- Increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- Take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- Ban provocative religious or political emblems from the workplace;
- Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- Abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
- Develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- Establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement;
- Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

Whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in the MacBride Act, and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the Department will refer such bids to the Commissioner of General Services, who may determine, in accordance with applicable law and rules, that it is in the best interest of the state that the contract be awarded to other than the lowest responsible bidder.

If the bidder conducts business operations in Northern Ireland and DOES NOT agree to stipulate to the conditions set forth in the MacBride Act, so indicate by crossing out Item #5 on the signature page of this bid proposal.

B. Omnibus Procurement Act. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

1. New York State Contractor Participation. Information on the availability of New York State subcontractors and suppliers is available from the Empire State Development Corporation, Small Business Division, 30 S. Pearl Street, Albany, NY 12245 (800) 782-8369. Companies requesting lists of potential subcontractors and suppliers are encouraged to identify the SIC code, size and location of vendors.

A directory of certified minority and women-owned business enterprises is available from the Empire State Development Corporation, Office of Minority and Women's Business Development

(M/WBD), 30 S. Pearl Street, Albany, NY 12245 (800) 782-8369. The Empire State Development Corporation maintains a web site at *www.empire.state.ny.us*.

Bidders located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the state in efforts to get foreign countries to recognize offset credits created by the procurement contract.

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

- a. The successful contractor shall document efforts to encourage the participation of New York State business enterprises as material suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State.
- b. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has:
 - 1. Solicited bids, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned businesses, or
 - 2. Contacted the Empire State Development Corporation to obtain listings of New York State business enterprises, or
 - 3. Placed notices for subcontractors and material suppliers in newspapers, journals and other trade publications distributed in New York State, or
 - 4. Participated in bidder outreach conferences.
 - 5. If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.
 - 6. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.
- c. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.
- d. The contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Community Services Division of the New York State Department of Labor, or proving such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request.

2. Reciprocity and Sanctions Provisions. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

102-10 LABOR AND EMPLOYMENT.

The provisions of NYS Labor Law, as amended, and referred to in §102-08, *Standard Clauses for All New York State Contracts*, shall be applicable. On contracts financed with Federal-Aid, any provisions of NYS Labor Law that are in conflict with mandatory Federal-Aid construction contract compliance requirements, as contained in 23 CFR 635.117 are superseded. Any provisions of NYS Labor Law that are not in conflict with mandatory Federal-Aid construction contract compliance requirements or the Davis-Bacon Act, but are more restrictive, shall apply.

The Contractor shall directly employ those members of its own organization. Employee leasing and other similar arrangements under which workers are employed by another organization will only be considered under a subcontract approved in accordance with §108-05, *Subletting or Assigning the Contract*.

A. Wages. The Department will provide the Contractor with prevailing wage rate schedules. When both State and Federal wage rate schedules are provided, the Contractor shall pay the higher of the two wages and supplemental (fringe) benefits. If prevailing wage rate schedules are attached, all on-site work shall be paid prevailing wages. The Contractor shall ensure that workers are paid the appropriate wages and supplemental (fringe) benefits. The Contractor shall obtain periodic wage rate schedule updates from the NYS Department of Labor (NYSDOL). Wage rate amendments and supplements are available on the NYSDOL web site at *www.labor.state.ny.us*. All changes or clarification of labor classification(s) and applicability of prevailing wage rates shall be obtained in writing from the Office of the Director, NYSDOL Bureau of Public Work. The Contractor shall include the cost of changes in wage rate schedules and supplements (fringes) over the contract duration in the contract bid prices.

On-site Contractor or Subcontractor employees shall be paid prevailing wages required under the Davis-Bacon Act. In accordance with 29 CFR 5.2(l), "site of the work" is defined as the physical place or places where the construction called for in the contract will remain when work on it has been completed. Facilities such as fabrication plants, mobile factories, batch plants, borrow pits, etc. are part of the site of the work provided that they are dedicated exclusively to the performance of the contract. Not included in the site of the work are facilities whose continuance in operation are determined wholly without regard to a particular contract. Such permanent, previously established facilities are not a part of the "site of the work," even where the operations for a period of time may be dedicated exclusively to the performance of a contract.

In accordance with NYS Labor Law, Sections 220 and 220-d:

1. No laborer, worker, or mechanic, in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight (8) hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
2. The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
3. The minimum hourly rate of wages to be paid shall not be less than that stated in the contract documents, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
4. The contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:
 - a. the stipulated wage scale as provided in Labor Law, §220 (3), as amended, or;
 - b. the stipulated minimum hourly wage scale as provided in Labor Law, §220-d, as amended.

B. Overtime Dispensation. All bidders, in submitting their bids, should base their bids and work progression on the assumption that Overtime Dispensation pursuant to Article 8 of the New York State Labor Law, for any workers, laborers, and mechanics to work more than 8 hours in any one calendar day or more than 5 days in any one week will not be granted for any operation for the contract duration. Regardless of approval or disapproval of overtime by the NYSDOL, no adjustment will be made in any bid prices.

Subsequent to award, where the contract proposal has imposed specific scheduling and/or phasing requirements or where it is determined by the Department to be in the best interest of the public, the Department may process, for approval by the NYSDOL, requests for overtime dispensation on certain specific operations.

The Contractor shall submit requests for overtime dispensation to the Department on Form PW-30, Application for Dispensation for Hours, which will be provided by the Engineer upon request. The Department will review applications for overtime dispensation submitted by the Contractor associated with contracts subject to (A+B) Bidding, Incentive/Disincentive (I/D) or Lane Rental work favorably, but the application should not request more than 60 hours per week. The 60 hours per week may be either 6 - 10 hour days or 5 - 12 hour days. Overtime dispensations will be supported by the Department to advance Department goals and priorities, subject to specific circumstances and conditions associated with each contract.

The Department cannot guarantee that the NYSDOL will grant dispensation from restrictions pursuant to the provisions of Article 8 of the State Labor Law, however with the Department's certification, it is anticipated that they will act favorably, provided that the Contractor is in compliance with Labor Law requirements at the time of application.

C. Payrolls. The Contractor shall furnish the Engineer, each week, a certified payroll and statement of compliance with respect to the wages paid each of its employees, (including apprentices, trainees, watch persons and guards) and a certified payroll from each Subcontractor engaged on work during the preceding weekly payroll period.

Certified payrolls shall contain work class, hours worked, wage rate, payroll taxes and withholdings. Certified payrolls shall be annotated by race and gender, and shall be submitted on Form WH-347 or Form HC-231-1 for Federal-Aid contracts, and on HC-231-1 for non Federal-Aid contracts. At the Contractor's option, computer printed payroll records, which supply the required data and certifications may be used.

D. Training. An apprentice is defined as an individual who is enrolled in an apprenticeship training program that is registered with the NYS Department of Labor. A trainee is defined as an individual who is enrolled in an On-the-Job Training (OJT) program that is approved by the Federal Highway Administration (FHWA).

A number of sources to obtain training for apprentices/trainees are available. These include:

- A NYSDOL-approved apprenticeship program sponsored by a union or a temporary project level agreement with a union which has a NYSDOL approved apprenticeship program.
- A NYSDOL-approved apprenticeship program sponsored by a contractor.
- A NYSDOL-approved apprenticeship program sponsored by a contractor signatory with an apprenticeship sponsor consortium for certain services.
- An FHWA-approved OJT program (where applicable).

Approved OJT Programs are currently limited to apprenticeable occupations as determined by NYSDOL or USDOL. A list of approved OJT programs can be found in the On-the-Job Training and Apprenticeship Program Construction Catalogue which is available through the Department's Office of Equal Opportunity Development and Compliance.

Training under Training Special Provisions, if required, will be shown in the contract documents. In order to fulfill training requirements required under Training Special Provisions and/or §102-11 *Equal Employment Opportunity Requirements*, training should begin as early as possible during a construction contract. The Department recommends that all bidders have an approved apprenticeship or OJT program prior to bidding.

The Contractor shall furnish the apprentice/trainee a copy of the program to be followed in providing the training. The Contractor shall provide each apprentice/trainee with a certification showing the type and length of training satisfactorily completed.

When training is required under Training Special Provisions and/or §102-11 *Equal Employment Opportunity Requirements*, the Contractor shall designate to the Engineer, at the preconstruction meeting, a person (or persons) from its existing workforce as the Trainer and Training Coordinator for any apprentice(s)/ trainee(s).

The Trainer shall:

1. Be located on the contract site generally on a daily basis; and
2. Be responsible for the day-to-day supervision and training of persons on the contract; and

3. Be responsible for the preparation and submission of a monthly training progress report, after consultation with designated apprentices/trainees.

The Training Coordinator shall:

1. Be knowledgeable about the contract and the Apprenticeship/OJT programs to be used; and
2. Be responsible for ensuring on-the-job orientation of apprentice/trainees; and
3. Be responsible for ensuring meaningful and effective training for the duration of training.

E. Public Notices. Before commencing any work on the site, the Contractor shall provide a satisfactory weather resistant surface, and post, in a location accessible to all workers, a copy of the NYS DOL schedules of prevailing wages and supplements for this contract, a copy of all redeterminations of such schedules for the contract, the Workers' Compensation Law notice, required safety notices, and all other notices required by law to be posted at the site. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The Notices shall be maintained until all work on the site is complete.

F. Federal-Aid Requirements. No procedures or requirement shall be imposed by any state which will operate to discriminate against the employment of labor from any other state, possession or territory of the United States, in the construction of a Federal-Aid project. The selection of labor to be employed by the Contractor on any Federal-Aid project shall be of its choosing.

The Contractor shall not use convict labor unless performed by convicts who are on parole, supervised release, or probation for construction, maintenance or any other purpose at the site or within the contract limits of any Federal-Aid highway construction project from the time of contract award or the start of work on force account until final acceptance of the work by the Department.

102-11 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.

The Department seeks to ensure nondiscrimination in employment under all Department contracts. The Contractor shall comply with the following Equal Employment Opportunity (EEO) requirements. The goals for a specific contract are contained in the Special Note *Goals for Equal Opportunity Employment Participation* in the contract proposal. The covered area is the county or counties in which the work is located.

For Federal-Aid contracts, Equal Employment Opportunity provisions are also found on Form FHWA 1273, Required Contract Provisions Federal-Aid Construction Contracts, or Form FHWA 1316, Required Contract Provisions Appalachian Development Highway System and Local Access Roads Construction Contracts, one of which is incorporated in the contract proposal.

Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

A. Statutory Authority. The Federal statutory authority for Equal Employment Opportunity provisions is contained in 23 U.S.C. 140(a), 23 CFR 230, 41 CFR 60-1 and 60-4, and Executive Order 11246. State statutory authority is contained in Section 85 of the Highway Law, Section 428 of the Transportation Law, NYS Executive Law Article 15-A, 5 NYCRR 140 and the rules promulgated thereunder.

B. Definitions.

1. For Federal-Aid contracts, a minority group member is defined under this subsection as someone who is, and can demonstrate membership in, one of the following groups::

- a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

- c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. For non Federal-Aid contracts, a minority group member is defined under this subsection as a United States citizen or permanent resident alien who is, and can demonstrate membership in, one of the following groups:

- a. Black persons having origins in any of the Black African racial groups;
- b. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- c. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent, or the Pacific Islands;
- d. Native American or Alaskan native persons having origins in any of the original peoples of North America.

C. Employment Goals. A goal(s) for minorities and a separate goal(s) for women are presented in the contract documents. The Contractor shall provide equal employment opportunity and shall take affirmative action for all minority groups, both male and female; and women, both minority and non-minority. If the Contractor performs work outside of the covered area, it shall apply the goals established for the county where the work is actually performed.

The goal(s) set for the contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress in meeting its goals in each trade. The hours of minority and female employment and training shall be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its contracts. The transfer of minority or female employees, apprentices, or trainees from contractor to contractor or from contract to contract for the sole purpose of meeting the Contractor's goals is a violation of the contract.

The Department, in evaluating the Contractor's good faith efforts to meet the goal(s), will analyze first the Contractor's goal attainment on an individual contract. If the Contractor is not meeting the goal(s) for a single trade or contract, the Department will analyze, progressively, the Contractor's goal attainment on all contracts held by the Contractor within the county, the Region, and/or the State. This method of analysis shall be applied primarily but not solely to contracts with small population numbers. Other factors to be considered include, but are not limited to the following: the location of the contracts, the relative proximity of the contracts to each other, and the nature of the work.

If the Contractor fails to meet the employment goal(s) for minorities or women specified in the contract documents, the Department may require training of minorities and women to satisfy the employment goals. The Contractor's compliance with Executive Order 11246 and 41 CFR 60-4 shall be based on its implementation of this subsection, affirmative action obligations required by 41 CFR 60-4.3(a), and its efforts to meet the goals.

D. Contractor Obligations.

1. Non-Discrimination. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability or marital status. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, age, disability or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places,

available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this non-discrimination clause.

The Contractor shall not use the goals or affirmative action requirements to discriminate against any person because of race, color, religion, sex, national origin, age, disability or marital status.

2. EEO Officer. The Contractor shall designate to the Engineer, on Form AAP 15, an Equal Employment Opportunity (EEO) Officer who shall have the responsibility to and shall be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who shall be assigned adequate authority and responsibility to do so.

3. Solicitations. The Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, disability or marital status.

4. Collective Bargaining Agreements. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations.

5. Complaints of Alleged Discrimination. The Contractor shall promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this contract, shall attempt to resolve such complaints, and shall take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, corrective action shall include such other persons. Upon completion of each investigation, the Contractor shall inform every complainant of all available avenues of appeal.

6. Workforce and Training Utilization. At the pre-construction meeting, the Contractor shall submit a Workforce and Training Utilization Schedule covering the Contractor's workforce and the workforce of all its Subcontractors, together with the contract progress schedule with which the Workforce and Training Utilization Schedule has been coordinated.

At a minimum, the *Workforce and Training Utilization Schedule* shall address the following:

- a. Equal Employment Opportunity goals in accordance with this subsection.
- b. Training goals in accordance with this subsection, Training Special Provisions, and specifically:
 - (1) A list of the approved OJT/apprenticeship program(s) the Contractor proposes to use;
 - (2) The name of individual(s) proposed by the Contractor to be trained as soon as it is possible to provide the name. For registered apprentice(s), apprentice registration (NYS DOL Form AT 401) and the approved apprenticeship program(s);
 - (3) The proposed training start dates for each individual, the operation(s) in which the individual is to begin training, and the proposed training duration.

The Contractor shall not start work until the Department and the Contractor have agreed upon the *Workforce and Training Utilization Schedule*. The Contractor shall submit a revised schedule when a significant work force build up or reduction will substantially affect goal attainment, or when a revised schedule is requested by the Department. Such revised Workforce and Training Utilization Schedule must be agreed upon by the Department or the original will remain in effect.

7. Reports and Records. The Contractor shall furnish information and reports as may be required and shall permit access to its books, records and accounts by the Department for purposes of investigating compliance with these requirements.

- a. *Employee Utilization Reports.* The Contractor shall submit employee utilization reports for its workforce, for each Subcontractor with a subcontract exceeding \$10,000, and a

composite report to the Engineer on a monthly basis and at contract completion. Cumulative records of total employee utilization from the start of the contract up to and including the current month showing hours worked for each trade and classification, by gender and ethnicity, shall be submitted with each report. Profile reports are not required.

b. Annual EEO Report. The Contractor shall submit an annual equal opportunity employment report to the Engineer not later than the second Friday in August covering the last payroll period in July, for all ongoing Federal-Aid contracts. The report shall show the number of minority, women, and non-minority employees currently engaged in each trade.

E. Affirmative Action Steps. The Contractor shall take specific affirmative actions to promote equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction contract. The Contractor shall specifically ensure that all forepersons, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals.
2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
4. Provide immediate written notification to the Department when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by either the NYS Department of Labor or the US Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under E.2. above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, forepersons, etc., prior to the initiation of construction work. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and Subcontractors with whom the Contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.
11. Validate all tests and other selection requirements in accordance with state and Federal laws, rules and regulations.
12. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for promotional opportunities through appropriate training, etc.
13. Ensure that seniority practices, labor classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
15. Document and maintain a record of all solicitations of offers for Subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

F. Contractor Associations. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling one or more of its obligations, provided that the Contractor actively participates in the group, makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

G. Enforcement. Enforcement of the provisions above includes, but is not limited to, monitoring the Contractor's employment practices, requiring employment related reports to be filed by the Contractor in a timely manner in a form acceptable to the Department, determining the Contractor's compliance with these specifications and taking such actions as authorized by law, rule, or regulation to enforce compliance by the Contractor.

Only the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) has the authority to determine compliance with Executive Order 11246 and its implementing regulations. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Federal-Aid contracts in accordance with procedures authorized in Executive Order 11246, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.

H. Hometown Plans (Federal-Aid Contracts Only). A Contractor participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the USDOL, either individually or through an association, (including heavy highway affirmative action plans) shall comply with its affirmative action obligations, for those trades which have unions participating in the Plan, under Executive Order 11246 by complying with its obligations under the plan: Provided, that each Contractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other Contractors toward a goal in an approved plan does not excuse any covered Contractor's failure to take good faith efforts to achieve the Plan goals and timetables. Contractors participating in Hometown Plans shall be able to demonstrate their participation and document their compliance with the provision of the Hometown Plan.

If a Contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in 41 CFR 60-4.3 of this part and with the goals and timetables for the appropriate area as listed in the notice required by 41 CFR 60-4.2 with regard to that trade. For the purposes of 41 CFR 60-4, a Contractor is not participating in a Hometown Plan for a particular trade if it:

1. Ceases to be signatory to a Hometown Plan covering that trade;
2. Is signatory to a Hometown Plan for that trade but is not party to a collective bargaining agreement for that trade;
3. Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organizations which are not or cease to be signatories to the same Hometown Plan for that trade;
4. Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan for that trade;
5. Is participating in a Hometown Plan for that trade which is no longer acceptable to the OFCCP.
6. Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade and the labor organization and the Contractor have failed to make a good faith effort to comply with their obligations under the Hometown Plan for that trade.

102-12 D/M/WBE UTILIZATION.

D/M/WBE is a general term that refers to a Disadvantaged Business Enterprises (DBEs), Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs). The DBE program applies to Federal-Aid contracts, and the MBE/WBE (M/WBE) program applies to non Federal-Aid contracts. The Department seeks to:

- Ensure nondiscrimination in award and administration of Department contracts;
- Ensure that only firms that fully meet D/M/WBE eligibility standards are permitted to participate in the Department's D/M/WBE programs;
- Help remove barriers to the participation of D/M/WBEs in the performance of Department contracts;
- Create a level playing field on which D/M/WBEs can fairly compete for Department contracts; and
- Assist in the development of firms that can compete successfully in the construction industry outside the D/M/WBE programs.

The parties to this contract shall take all necessary and reasonable steps in accordance with the laws, rules and regulations cited in this subsection to promote the objectives outlined above. The Contractor shall comply with the applicable laws, rules and regulations and the D/M/WBE Program requirements stated below. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in

the award and performance of Department contracts. These requirements shall be made a part of all subcontracts and agreements entered into as a result of this contract.

A. Statutory Authority.

1. Disadvantaged Business Enterprise (DBE) Program. The Federal statutory authority for the DBE Program is contained in the Surface Transportation Assistance Act of 1982 (Public Law 97-424, §105(f)), the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17, §106(c)), the Intermodal Surface Transportation Efficiency Act of 1991, and the Transportation Equity Act of the 21st Century. New York State has enacted Section 85 of the Highway Law and Section 428 of the Transportation Law. Regulations have been promulgated under 49 CFR 26 and 17 NYCRR 35.

2. Minority/Women's Business Enterprise (M/WBE) Program. The State statutory authority for the M/WBE Program is contained in Section 85 of the Highway Law, Section 428 of the Transportation Law, and Executive Law Article 15A. Regulations have been promulgated under 5 NYCRR 140. The parties to this contract shall comply with these laws, rules and regulations and the M/WBE Program requirements stated below.

GENERAL PROVISIONS

B. Goal(s). Federal-aid contracts have a single DBE goal. Non Federal-Aid contracts have two separate and distinct goals, one for MBEs and one for WBEs, which cannot be combined.

1. Established Goal(s). The Department may have established contract utilization goal(s) for D/M/WBEs, which are expressed as a percentage of the total contract price. The goal(s) are stated in the proposal and remain in effect throughout the life of the contract. In executing the contract or bid documents the Bidder declares that it subscribes to the utilization goal(s) and shall meet the goal(s) or demonstrate that it could not meet them despite its best efforts. Failure to meet the established goal(s) for the contract and failure to meet the good faith efforts, as defined in paragraph F Good Faith Efforts, may be grounds for rejection of the bid as non-responsive. When the contract is awarded with D/M/WBE participation that is less than the contract goal(s), the Contractor shall continue good faith efforts throughout the life of the contract.

2. Zero Percent Goal(s). When the Department has established zero goal(s) for participation by D/M/WBEs and the Bidder proposes the use of a Subcontractor or the purchase of goods from a material supplier at any time during the life of the contract, the Contractor shall promote the objectives outlined in this subsection by providing opportunities for D/M/WBEs to participate in these areas, with such participation to be credited towards the race-neutral component of the Department's D/M/WBE Programs.

C. Counting D/M/WBE Participation Towards the D/M/WBE Goal(s). A D/M/WBE that holds a Department contract may not count its own utilization in the contract toward the D/M/WBE contract goal(s).

The value of work actually performed by the D/M/WBE will be counted toward the goal(s) in the amounts set forth below. The proposed utilization must be considered to be a commercially useful function, as defined in paragraph D(1) Commercially Useful Function. If the Department determines that some or all of the D/M/WBE's work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal(s).

D/M/WBE participation will be counted toward meeting the D/M/WBE goal(s) in accordance with the following:

1. Eligibility.

a. DBE Eligibility. Only those DBE firms that are certified by the Department are eligible to be used for goal attainment on this contract. A DBE must be certified on the day the contract is let. DBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as a DBE.

b. M/WBE Eligibility. Only those M/WBE firms that are certified by the NYS Department of Economic Development are eligible to be used for goal attainment on this contract. An M/WBE must be certified on the day the contract is let. M/WBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as an M/WBE. The participation of a firm that is certified as both an MBE and a WBE will only be counted toward one goal, and cannot be divided between the two goals. Changes in the goal towards which participation applies after participation begins shall require Department approval in accordance with Paragraph J. *Revisions in D/M/WBE Utilization.*

2. Subcontracting. The total agreed value of work to be performed by the D/M/WBE's own forces is counted toward the D/M/WBE goal(s), except as provided in numbers 3 through 6 below.

3. D/M/WBE Joint Ventures. A D/M/WBE Joint Venture may be between a D/M/WBE and the Contractor, a majority Subcontractor or another D/M/WBE. The total dollar value of the contract equal to the distinct, clearly defined portion of the contract work that the D/M/WBE performs with its own equipment, with its own forces, and under its own supervision will be counted toward the D/M/WBE contract goal(s), subject to approval by the Department of the D/M/WBE joint venture agreement to be furnished by the Bidder before contract award. The D/M/WBE joint venture agreement shall include a detailed breakdown of the following:

- Contract responsibility of the D/M/WBE for specific contract items of work;
- Capital participation by the D/M/WBE;
- Specific equipment to be provided to the joint venture by the D/M/WBE;
- Specific responsibilities of the D/M/WBE in the control of the joint venture;
- Specific staffing and skills to be provided to the joint venture by the D/M/WBE; and
- Percentage distribution to the D/M/WBE of the projected profit or loss incurred by the joint venture.

4. Vendors. Expenditures for materials and supplies obtained from D/M/WBE Vendors, including Manufacturers, Fabricators, Material Suppliers, Brokers, and Manufacturers' Representatives in the amounts noted below will be counted toward the D/M/WBE goal(s). The D/M/WBE Vendor shall assume the actual and contractual responsibility for the provision of the materials and supplies. The cost of supplies purchased or materials or equipment leased from the Contractor, other Subcontractors on the contract, or their affiliates will not be counted.

The Bidder shall indicate on the *D/M/WBE Utilization Worksheet*, the 3 digit core specification section number(s) of the material to be supplied, manufactured, fabricated, or otherwise provided. If the material does not correspond to a Department contract pay item, use the following item numbers if applicable, and include in the description the contract pay item(s) to which the activity relates:

- 00.00 Supply of Eligible Materials
- 00.01 Provision of Eligible Manufactured or Altered Material
- 00.02 Rental of Equipment
- 00.05 Provision of Security Devices

a. Manufacturers/Fabricators. Count 100% of the expenditure to a D/M/WBE Manufacturer or Fabricator.

b. Material Suppliers. Count 60% (sixty percent) of the expenditure to a D/M/WBE Material Supplier, as defined in §101-02 *Definitions of Terms*. Packagers, brokers, manufacturers'

representatives, or other persons who arrange or expedite transactions are not Material Suppliers within the meaning of this paragraph.

c. Brokers/Manufacturer's Representatives. With respect to materials or supplies purchased from a D/M/WBE which is neither a Manufacturer nor a Fabricator nor a Material Supplier, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies required toward the D/M/WBE goal(s), provided they are determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves are not counted.

5. Trucking Operations. Count toward the D/M/WBE goal(s) the expenditure for trucking provided by certified D/M/WBEs in accordance with the following:

a. To satisfy the criterion of performing a commercially useful function, a D/M/WBE shall own and operate at least one registered, insured, and fully operational truck used on the contract and shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the D/M/WBE goal(s).

b. The D/M/WBE receives credit for 100% of the value of the trucking operations it provides on the contract using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the D/M/WBE using drivers it employs.

c. The D/M/WBE may lease trucks on a short-term basis from another D/M/WBE, including an owner/operator who is certified as a D/M/WBE. The D/M/WBE who leases trucks from another D/M/WBE receives credit for 100% of the value of the trucking operations that the lessee D/M/WBE provides on the contract.

d. The D/M/WBE may lease trucks on a short-term basis from a non-D/M/WBE, including an owner-operator. The D/M/WBE who leases trucks from a non-D/M/WBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The D/M/WBE does not receive credit for the value of the trucking operations provided by the lessee, because these services are not provided by a D/M/WBE.

e. The Bidder shall provide the following with the D/M/WBE Utilization Package:

1. Copies of all lease agreements utilized by the D/M/WBE; and
2. Calculations and any pertinent documentation that support the dollar value of the proposed D/M/WBE trucking operations; e.g., method of payment (hour, ton or load hauled), the number of trucks required to perform the trucking operations listed on the *D/M/WBE Utilization Worksheet*, and the duration of the trucking operations to be performed.

f. The Bidder shall indicate in the form of an explanation on the *D/M/WBE Utilization Worksheet*, the Specification section number(s) (3 digits) for which the trucking operations are to be performed, the type of trucking operation to be performed (i.e., on-site vs. off-site), and the corresponding dollar value for those operations, per item. Material that does not correspond to a Department contract pay item, should use the following item number if applicable:

99.99 Provision of Eligible Trucking Services

g. The D/M/WBE trucking firm of record is the firm that is listed on the *D/M/WBE Utilization Worksheet*. The D/M/WBE trucking firm of record must control the day-to-day trucking operations on the contract, and be responsible for:

1. Negotiating and executing rental/leasing agreements;
2. Hiring and firing the work force;
3. Coordinating the daily trucking needs with the Contractor; and
4. Scheduling and dispatching trucks.

6. Partial Items. The Bidder shall explain, in writing, the scope of work to be performed by the D/M/WBE for all items indicated as partial items on the *D/M/WBE Utilization Worksheet* at the time the Bidder submits the Utilization Package.

7. Other. Count the entire amount of fees or commissions charged by a D/M/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

D. Conditions of Participation. D/M/WBE participation will be counted toward meeting the D/M/WBE contract goal(s), subject to all of the following conditions:

1. Commercially Useful Function. A D/M/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the D/M/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the D/M/WBE or in any other way does not meet the commercially useful function requirement, the Contractor shall receive no credit toward the goal(s) and may be required to backfill the participation in accordance with Paragraph I *Conformance to D/M/WBE Schedule of Utilization*. A D/M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of D/M/WBE participation.

A DBE may rebut a determination by the Department that the DBE is not performing a commercially useful function to the FHWA but the determination may not be appealed to USDOT. An M/WBE may rebut a determination by the Department that the M/WBE is not performing a commercially useful function to the NYS Department of Economic Development.

2. Work Force. The D/M/WBE must employ a work force, (including administrative and clerical) separate and apart from that employed by the Contractor, other Subcontractors on the contract, or their affiliates. This does not preclude the employment by the D/M/WBE of an individual that has been previously employed by another firm involved in the contract, provided that the individual was independently recruited by the D/M/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the D/M/WBE shall not be allowed.

3. Supervision. All work performed by the D/M/WBE must be controlled and supervised by the D/M/WBE without duplication of supervisory personnel from the Contractor, other Subcontractors on the contract, or their affiliates. This does not preclude routine communication between the supervisory personnel of the D/M/WBE and other supervisors necessary to coordinate the contract work.

4. Equipment. D/M/WBE Subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. However, no more than 50% of the equipment required to perform the work of the Subcontractor may be obtained from the Contractor, other Subcontractors on the contract, or their affiliates. If the D/M/WBE obtains equipment from any of those sources, the D/M/WBE shall provide documentation to the Department demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include, but not be limited to, copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.

PRE-AWARD PROVISIONS

E. Requests For Waiver. A potential bidder may request a waiver of all or part of a contract's D/M/WBE goal(s) by submitting a written request to OEODC. A potential bidder is defined as one who has purchased the contract documents. The request shall be submitted no later than twenty-five (25) calendar days prior to the contract letting, in order to allow sufficient time for a review and issuance of an amendment of the established goal(s), if necessary, in accordance with the Department's schedule for contract amendments. The request should contain sufficient justification as to why the goal(s) should be waived or reduced, and should at least address the following factors: the potential Bidder's method of accomplishing the work, the subcontracting opportunities associated with the proposed method, and the availability of certified D/M/WBEs for the work to be subcontracted.

F. Good Faith Efforts. To determine whether a bidder that has failed to meet the D/M/WBE contract goal(s) may receive the contract, the Department will decide whether the efforts the Bidder made to obtain D/M/WBE participation were "good faith efforts" to meet the goal(s). Efforts that are merely pro forma are not good faith efforts to meet the goal(s). Efforts to obtain D/M/WBE participation are not good faith efforts to meet the goal(s), even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of D/M/WBE participation sufficient to meet the goal(s). In order to award a contract to a bidder that has failed to meet the D/M/WBE contract goal(s), the Department will determine that the Bidder's efforts were those that, given all relevant circumstances, a bidder actively and aggressively seeking to meet the goal(s) would make.

In order to evaluate the Bidder's conformance to this subsection, the Department will consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made. The following is a list of the types of actions which the Department will consider as part of the Bidder's good faith efforts to obtain D/M/WBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exhaustive or exclusive. Other factors or types of efforts may be relevant in appropriate cases.

The following is a list of the kinds of efforts that the Department will evaluate to determine if the Bidder has demonstrated a good faith effort:

1. Efforts to secure participation by certified D/M/WBE firms for work that they are listed to perform that is in the contract. Only DBEs certified by the Department shall be used to fulfill the established goal on Federal-Aid contracts. Only M/WBEs certified by the NYS Department of Economic Development shall be used to fulfill the established goal(s) on non Federal-Aid contracts.
2. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified D/M/WBEs who have the capability to perform the work of the contract. The Bidder shall solicit this interest within sufficient time to allow the D/M/WBEs to respond to the solicitation. The Bidder shall determine with certainty if the D/M/WBEs are interested by taking appropriate steps to follow up on initial solicitations.
3. *a.* The Bidder shall, at a minimum, seek certified D/M/WBEs in the same geographic area where the contract is located. This is defined as a one hundred (100) kilometer radius around the city, town or borough where the contract is located as identified in the contract proposal. For specialty work such as pavement markings, guide rail, etc. (as defined in the contract proposal) the Bidder shall, at a minimum, solicit on an upstate or downstate basis, depending upon the location of the contract.
b. The Department has facilitated identification of upstate, downstate and areas within a 100 km radius through its automated D/M/WBE solicitation program, which is accessible on the Internet on the Department's Web Page at www.dot.state.ny.us. For more information contact the NYSDOT Help Desk at (518) 485-8111. For bidders who do not have internet capability, a hard copy solicitation report for a specific contract can be requested by contacting the OEODC Construction Program Unit at (518) 457-1129.
4. Selecting portions of the work to be performed by D/M/WBEs in order to increase the likelihood that the D/M/WBE goal(s) will be achieved. This includes, where appropriate, either breaking down operations within the contract or combining like or related operations in the contract into logistically and economically feasible units to facilitate D/M/WBE participation,

even when the Contractor might otherwise prefer to perform these work items with its own forces.

5. Providing interested D/M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

6. a. Negotiating in good faith with interested D/M/WBEs. It is the Bidder's responsibility to make a portion of the work available to D/M/WBE Subcontractors and material suppliers and to select those portions of the work or material needs consistent with the available D/M/WBE Subcontractors and material suppliers, so as to facilitate D/M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for D/M/WBEs to perform the work.

b. The fact that there may be some additional costs involved in finding and using D/M/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract D/M/WBE goal(s), as long as such costs are reasonable. The ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from D/M/WBEs if the price difference is excessive or unreasonable.

7. Not rejecting D/M/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

8. Making efforts to assist interested D/M/WBEs in obtaining bonding, lines of credit or insurance as required by the Department.

9. Making efforts to assist interested D/M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance.

10. Effectively using the services of available minority/women focused media, trade associations, and contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of D/M/WBEs.

11. All bidders shall keep records of efforts to solicit and negotiate with D/M/WBEs, using the *Solicitation Log* as a continuing record of pre- and post-letting solicitation activity. When submitting a *D/M/WBE Schedule of Utilization* to the Department, the Apparent Low Bidder will attach the log, together with the supplemental information specified in the instructions for the *Solicitation Log* as evidence of good-faith efforts when the established D/M/WBE goal(s) for the contract have not been met utilizing certified D/M/WBEs. Such supplemental efforts shall include at least the following:

a. All envelopes of solicitation inquires that were returned as undeliverable; and

b. Any quotations submitted by D/M/WBEs that are not included in the *D/M/WBE Schedule of Utilization* with an explanation for the Bidder's action in each case.

12. Promptly executing an agreement with D/M/WBE Subcontractors/vendors.

G. D/M/WBE Utilization Package. Within seven (7) calendar days after bid letting, the Apparent Low Bidder shall submit a complete D/M/WBE utilization package consisting of:

1. D/M/WBE Schedule of Utilization;
2. *D/M/WBE Utilization Worksheet* (Co-signed by both the Contractor and the D/M/WBE); and
3. Documentation that substantiates good faith efforts.

If the Apparent Low Bidder has met or exceeded the established D/M/WBE goal(s) for the contract utilizing certified D/M/WBEs it is not necessary to submit documentation of good faith efforts. If the Apparent Low Bidder owns Department approved civil rights reporting software, the Bidder shall submit *D/M/WBE Schedule of Utilization* and *D/M/WBE Utilization Worksheet* forms generated by the approved software.

H. Bidder's Failure to Comply. The Department's acceptance of the Apparent Low Bidder's proposal is conditioned upon the Apparent Low Bidder's fulfillment of the requirements of this subsection. If the Apparent Low Bidder fails to submit a complete D/M/WBE utilization package within seven (7) calendar days after the bid opening and/or fails to attain the D/M/WBE utilization goal(s), and to satisfactorily document its good faith efforts, the bid may be declared incomplete and the deposit may be subject to forfeiture pursuant to §103-02 *Contract Execution*. The Apparent Low Bidder, upon receipt of written notification of his/her failure to comply with the requirements of this subsection shall have five (5) work days to carry out the corrective action(s) described in the notification.

If the Department determines that the Apparent Low Bidder has failed to meet the good faith effort requirements, the Department will, before awarding the contract, provide the Apparent Low Bidder an opportunity for administrative reconsideration by an official who did not take part in the original determination that the Apparent Low Bidder failed to meet the goal(s) or make adequate good faith efforts to do so. As part of this reconsideration, the Apparent Low Bidder shall have the opportunity to provide written documentation or argument and to meet in person with the Department's reconsideration official concerning the issue of whether it met the goal(s) or made adequate good faith efforts to do so. The Department will send the Apparent Low Bidder a written decision on reconsideration, explaining the basis for finding that the Apparent Low Bidder did or did not meet the goal(s) or make adequate good faith efforts to do so.

POST AWARD PROVISIONS

I. Conformance to D/M/WBE Schedule of Utilization. The Contractor shall execute subcontracts or agreements with the D/M/WBEs identified on the approved *D/M/WBE Schedule of Utilization*, for work of the kind and amount identified therein. The Engineer will monitor the work of the contract to ensure that the D/M/WBEs identified on *D/M/WBE Schedule of Utilization* perform the work. Any direction by the Engineer to comply with the Schedule is a lawful direction under Article 8 No *Estimate on Contractor's Non-Compliance* of the contract agreement.

J. Revisions to D/M/WBE Utilization. After contract award, the Contractor shall obtain Department approval for significant revisions in D/M/WBE utilization prior to implementing any proposed change through submission of a revised *D/M/WBE Schedule of Utilization*, and a revised *D/M/WBE Utilization Worksheet* signed by both parties. Revisions shall be entered into, and generated from Department approved software in accordance with §105-21 *Civil Rights Reporting*. The following modifications will be considered a significant revision in D/M/WBE utilization:

1. Adding, removing or substituting a D/M/WBE.
2. Adding new item(s) of work to a D/M/WBE within a core (3 digit) contract pay item number (i.e. 606 – *Guide Railing*) not currently approved.
3. Significantly reducing the dollar value of or eliminating the D/M/WBE's item(s) of work. Significant reduction will be determined by the Engineer by comparison to the total D/M/WBE contract goal.

In the cases of reduction, removal or substitution, the Contractor shall provide written justification with a substantive basis for the change. A Contractor's ability to negotiate a more advantageous contract with another Subcontractor will not be considered a valid basis for change.

If the reduction of the D/M/WBE's work or the removal of the D/M/WBE, including for reasons of commercially useful function violations, causes the D/M/WBE utilization to fall below the goal(s), the Contractor shall make good faith efforts to find another D/M/WBE to substitute for the original D/M/WBE to perform at least the same amount of work as the D/M/WBE that was terminated, to the extent needed to meet the contract goal(s).

A D/M/WBE may be substituted if its intended work is deleted or reduced by the Department and enough work remains to substitute an equal amount to the affected D/M/WBE. If not enough work remains, the Department may relieve the Contractor from attaining that portion of the goal(s).

After contract award, the Contractor is not required to submit hard copy forms for non-significant revisions in D/M/WBE utilization. The following modifications will not be considered a significant revision in D/M/WBE utilization:

1. Increasing the dollar value of an item(s) of work or adding new item(s) of work within the same core (3 digit) contract pay item number (i.e. 606 – *Guide Railing*) to a D/M/WBE.
2. Substituting similar dollar values of work within a currently approved core (3 digit) contract pay item number (i.e. 606 – *Guide Railing*).

K. Monitoring Contractor Compliance. The Contractor shall allow authorized representatives of the Department to conduct periodic inspections of the Contractor's D/M/WBE participation efforts during the performance of this contract. When a Contractor has been found to have failed to meet the contract goal(s), to exert a good faith effort, or otherwise failed to comply with this subsection, the contract may be canceled, terminated, or suspended in whole or in part in accordance with Article 11 *Right to Suspend Work and Cancel Contract* of the contract agreement and Section 40 of the Highway Law.

1. Measuring Goal Attainment. Goal attainment will be measured based on payments made to D/M/WBEs. In order to measure goal attainment and to gauge the effect of goals on the industry, the Contractor shall report payments made to all D/M/WBEs and all majority Subcontractors participating in the contract. Reports of payments shall be made on a monthly basis for all Subcontractors/Vendors due payment for which there is an *Approval to Subcontract* or a *D/M/WBE Utilization Worksheet* on file with the Department, and at completion of the contract, in accordance with §105-21 *Civil Rights Reporting*. Reports made at contract completion shall be signed and notarized by both the Contractor and the Subcontractor/Vendor.

2. DBE Program. In order to determine whether the Contractor has complied with the requirements of this subsection, the Commissioner may direct the Contractor to attend a hearing before the Contract Review Unit, or may follow any other lawful procedure upon due notice in writing to the Contractor. The Contractor may also be referred to the USDOT for possible suspension or debarment as provided in 49 CFR 29 and such other sanctions as may be imposed and remedies invoked as provided under the authority of 49 CFR 26, or by rule, regulation, or order of the Commissioner or as otherwise provided by law.

3. M/WBE Program. In order to determine whether the Contractor has complied with the requirements of this subsection, the Commissioner may direct the Contractor to attend a hearing before the Contract Review Unit, or may file a complaint with the NYS Department of Economic Development, Division of Minority and Women's Business Development pursuant to Executive Law, Article 15A, Section 316, or may follow any other lawful procedure upon due notice in writing to the Contractor. Such other sanctions may also be imposed and remedies invoked as provided under the authority of Executive Law Article 15A, 5 NYCRR 140 et seq., or by rule, regulation, or order of the Commissioner or as otherwise provided by law.

L. Prompt Payment. The Contractor shall pay the D/M/WBE in accordance with §109-06, *Contract Payments* and §109-07, *Prompt Payments by the Contractor*. Failure by the Contractor to do so may result in the withholding of future estimated payments by the Department.

M. Non-discrimination. The Contractor shall not use the requirements of these specifications to discriminate against any qualified company or group of companies.

N. Reporting Violations of Program Rules. If the Contractor becomes aware of any violations of this Specification, the Contractor shall promptly report the violations to the Engineer.

102-13 STATE AND LOCAL SALES TAX EXEMPTION.

In accordance with Section 1115 of the Tax Law, in connection with capital improvement contracts all tangible personal property which will become an integral component of a structure, building or real

property of the State, or any of its political subdivisions, is exempt from State and local retail sales tax and compensating use tax.

102-14 FORM OF CONTRACT AND BID BOND.

The form of contract and bid bond, if given, shall be that provided by the Department.

All of the following sections which have the word "Sample" in the title are samples of the contract documents executed by the Contractor as a part of the bidding and/or award process. The executed bid documents control and have precedence over the samples presented herein.

A. Federal-Aid Contracts. Federal-Aid contracts are denoted "F.A. Project" on the proposal cover and on the title page. The following subsections of Section 102 apply to all Federal-Aid contracts:

- 1. §102-01 to §102-08
- 2. §102-10 to §102-14
- 3. §102-15 to §102-17 (Samples Only)

B. Non Federal-Aid Contracts. The following subsections of Section 102 apply to all Non Federal-Aid contracts:

- 1. §102-01 to §102-14
- 2. §102-15 to §102-17 (Samples Only)

102-15 SAMPLE FORM OF BID BOND.

KNOW ALL PERSONS BY THESE PRESENTS, That _____
(Name of Contractor)

(Address)

(hereinafter called the "Principal") and the _____
a corporation created and existing under the laws of the State of _____, having its principal office in the City of _____ (hereinafter called the "Surety"), are held and firmly bound unto The People of the State of New York (hereinafter called the "State"), in the full just sum of [*Twenty-Five Percent (25%) of Attached Bid*], good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made and done, the said Principal binds themselves (himself/herself, itself), their (his/her, its) heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:

WHEREAS, the said Principal has submitted to the Commissioner of Transportation of the State of New York, a proposal for _____
(Project Description), and

WHEREAS, under the terms of the Laws of the State of New York as above indicated, the said Principal has filed or intends to file this bond to guarantee that the Principal will execute all required contract proposal documents and furnish such faithful performance or other bonds as may be required by law in accordance with the terms of the Principal's said proposal.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if the said Principal shall promptly execute and submit, and the Commissioner of Transportation shall accept, all required contract proposal documents including such faithful performance bond or other bonds as may be required by law in accordance with the terms of the Principal's said proposal, then this obligation shall be null and void, otherwise to remain in full force and virtue.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their, its) hand and the said Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered this ____ day of _____ 20__ in the presence of:

(Company)

_____) Principal
 (Signature)
 _____)
 (Title)
 _____)
 (Company)
 By _____) Surety
 (Signature)
 _____)
 (Title of Authorized Officer)

(The Surety Company shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).)

(Acknowledgment of principal, unless it be a corporation)

STATE OF NEW YORK ss. :
COUNTY OF _____

On this _____ day of _____ 20 __, before me personally came _____
to me known and known to me to be the person described in and who executed the foregoing instrument
and acknowledged that he/she executed the same.

Notary Public

(Acknowledgment of principal, if a corporation)

STATE OF NEW YORK ss. :
COUNTY _____

On this _____ day of _____ 20 __, before me personally came _____
to me known and known to me to be the person, who being by me duly sworn, did depose and say that
he/she resides in _____ that he/she is the _____ of
_____ the corporation described in and which executed the foregoing
instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said
Corporation.

Notary Public

(Acknowledgment of Surety Company)

STATE OF NEW YORK ss. :
COUNTY OF _____

On this _____ day of _____ 20 __, before me personally came _____
to me known and known to me to be the person, who being by me duly sworn, did depose and say that
he/she resides in _____, that he/she is the _____ of
_____ the corporation described in the foregoing instrument; and that
he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

102-16 SAMPLE CONTRACT PAY ITEM FORMAT.

LN #	ITEM DESCRIPTION	EST OF QUANTITIES AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CENTS	DOLLARS	CENTS
0002	ITEM:201.06 LUMP SUM CLEARING AND GRUBBING	NEC LUMP SUM				
0012	ITEM:203.03 CUBIC METERS EMBANKMENT IN PLACE	14521.00 PER CUBIC METER				
0064	ITEM:402.195911 QUALITY UNITS PLANT PRODUCTION QUALITY ADJUSTMENT TO 402.195901 FIXED PRICE: SEE SPECIFICATION AND SUBSECTION 102-03.	123.00 PER QUALITY UNIT	55.000		6765.00	
0248	ITEM:637.2101 10 LUMP SUM PORTABLE CELLULAR DIGITAL TELEPHONE (HANDS FREE)/(RADIO EQUIPMENT) (FIXED PRICE) FIXED PRICE: SEE SPECIFICATION AND SUBSECTION 102-03.	NEC LUMP SUM	7200.000		7200.00	
0406	ITEM:697.0201 DOLLARS AND CENTS FIELD CHANGE ORDER (FCO) FIXED PRICE: SEE SPECIFICATION AND SUBSECTION 102-03.	510000.00 PER DOLLARS AND CENTS	1.000		510000.00	
0414	ITEM:699.040001 MOBILIZATION MUST NOT EXCEED 4% OF SUBTOTAL SHOWN ABOVE. SEE SPECIFICATION FOR THIS ITEM.	NEC LUMP SUM				
PLEASE BE SURE A BID IS ENTERED FOR EACH ITEM, EXCEPT AS DIRECTED FOR OPTIONAL ITEMS.						
					\$	

102-17 SAMPLE FORM OF ITEMIZED PROPOSAL/JURAT.

ITEMIZED PROPOSAL

To the State Department of Transportation:

In submitting this bid the undersigned declares to be the only person or persons interested in the said bid; that it is made without any connection with any person making another bid for the same contract; that the bid is in all respects fair and without collusion, fraud or mental reservation; and that no official of the

State, or any person in the employ of the State is directly or indirectly interested in said bid or in the supplies or work to which it relates, or in any portion of the profits thereof.

The undersigned also hereby declares to have carefully examined the plans, specifications and form of contract, and to have personally inspected the actual location of the work together with the local sources of supply, to be satisfied as to all the quantities and conditions, and understands that in signing this proposal waives all right to plead any misunderstanding regarding the same.

The undersigned further understands and agrees to furnish and provide for the respective item price bid all the necessary material, machinery, implements, tools, labor services and other items of whatever nature, and to do and perform all the work necessary under the aforesaid conditions, to complete the improvement of the aforementioned project in accordance with the plans and specifications for said improvement, which plans and specifications it is agreed are a part of this proposal, and to accept in full compensation therefore the amount of the summation of the products of the approximate quantities multiplied by the unit prices bid. This summation will hereinafter be referred to as the gross sum bid.

The undersigned further agrees to accept the aforesaid unit bid prices as compensations for any additions or deductions caused by variation in quantities due to more accurate measurement, and for use in the computation of the value of the work performed for monthly estimates.

The undersigned further agrees that at any time during the progress of work the State adds, alters or omits portions of the work it shall so perform such work and accept compensation in accordance with the Standard Specifications.

The undersigned further understands and agrees not to start any work until the contract agreement is signed by the Commissioner or the Commissioner's duly authorized representative. In case the undersigned voluntarily undertakes to start work, other than that expressly prohibited in this Subsection, after the contract agreement is signed by the Commissioner but prior to approval by the State Comptroller, the undersigned does so entirely at its own risk and without obligation or responsibility on the part of the State unless and until the awarded contract becomes effective pursuant to Section 112 of the State Finance Law by approval of the State Comptroller and filing in the office of the State Comptroller; and hereby agrees and warrants that, as a prerequisite to the start of any such voluntary work, accepts, assumes and undertakes all of the provisions of this proposal and of the plans and specifications of the proposed contract, including all of the provisions and responsibilities thereof relative to (1) damage, indemnification and holding the State harmless as set forth in said contract documents, and (2) actually furnishing in advance of any contract operations, the required insurance policies of each and every kind and amount as called for in said contract documents, particularly with relation to workers' compensation and liability insurance policies as set forth in the related specifications; and also agrees and warrants that all of such policies will be in force and effect on the date of the start of any such contract operations, whether or not the contract documents have been executed and filed as aforesaid. In no event shall the undersigned start any contract work which involves a disturbance of the contract site prior to execution of the contract by the Comptroller.

Bid Deposit

Accompanying this proposal is a bid bond, certified check or bank cashier's check for the specified amount of deposit required. In the event this proposal is accepted by the Department of Transportation and the undersigned shall fail to execute the contract and in all respects comply with the provisions of Section 38 of the Highway Law, as amended, or where applicable, Section 30 of the Canal Law, as amended, the moneys represented by such bid bond, certified check or bank cashier's check shall be regarded as liquidated damages and shall be forfeited and become the property of the State of New York; otherwise to be returned to the depositor in accordance with the provisions of said Section 38 of the Highway Law, as amended, or where applicable with Section 30 of the Canal Law, as amended.

On acceptance of this proposal for said work the undersigned does or do hereby bind herself/himself or itself/themselves to enter into written contract, within ten days of date of notice of award, with the said Department of Transportation, and to comply in all respects with §38(6) of the Highway Law, as amended, or where applicable with §30(7) of the Canal Law, as amended, in relation to security for the faithful performance of the terms of said contract.

Non-Collusive Bidding Certifications (NYS Finance Law §139-D)

1. Every bid hereafter made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be

performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise-required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph 1.(a).

2. Any bid hereafter made to the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non collusion as the act and deed of the corporation.

Non-Collusive Bidding Certification (49 CFR 29)

The Contractor to whom the above identified contract is to be awarded does hereby tender to the New York State Department of Transportation this sworn statement pursuant to Section 112(c) of Title 23 U.S. Code *Highways* and does hereby certify, in conformance with said 23 USC 112(c) that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above identified contract.

The signatory to this proposal, being duly sworn, certifies that, **EXCEPT AS NOTED BELOW**, its company and any person associated therewith in then capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

- 1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- 2) has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- 3) does not have a proposed debarment pending; and
- 4) has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent Jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS - List any relevant information, attaching additional sheets if necessary. (Exceptions will not necessarily result in disapproval, but will be considered in determining responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.)

Lobbying Activity Certification [For Federal-Aid Contracts Only]

§102

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. (See Exhibit 1 annexed hereto)

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

UNITED STATES DEPARTMENT OF TRANSPORTATION HOTLINE

Persons with knowledge of bid collusion (i.e., contractors, suppliers, work persons, etc.), or other questionable contract related practices (inadequate materials, poor workmanship, theft of materials, etc.), are encouraged to report such activities by calling the U.S. DOT HOTLINE. The HOTLINE number is 1-800-424-9071 and calls will be answered from 8:00 A.M. to 5:00 P.M. EST, Monday through Friday.

This HOTLINE is under the direction of the U.S. DOT's Inspector General. All information will be treated confidentially and the caller's anonymity will be respected.

NEW YORK STATE INSPECTOR GENERAL HOTLINE

Reports of New York State Governmental Misconduct may be made in strict confidence to the New York State Inspector General on the Toll Free Statewide HOTLINE or by writing to the Office of the State Inspector General. The Toll-Free Statewide HOTLINE telephone number is 1-800-367-4448 and calls will be answered between 9:00 A.M. and 5:00 P.M., Monday through Friday. The address of the Office of the Inspector General is P.O. Box 9, One Commerce Plaza, Albany, New York 12260.

BY EXECUTING THIS PROPOSAL, THE CONTRACTOR AGREES TO:

1. Perform all work listed in accordance with the Contract Documents at the unit prices bid; subject to the Changed Conditions provisions if applicable;
2. All the terms and conditions of the non-collusive bidding certifications required by §139-d of the State Finance Law;
3. Certification of Specialty Items category selected, if contained in this proposal;
4. Certification of any other clauses required by this proposal and contained herein.
5. For Federal-Aid contracts only, Certification, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions or civil judgments required by 49 CFR, Part 29.
6. Contractor certifies that all information provided to the Department with respect to the requirements contained in State Finance Laws §139j and §139k is complete, true and accurate.

Dated _____, 20_____

§102

If a Partnership
Name

Address

If a Corporation
Name

Address

-----, President
-----, Secretary
-----, Treasurer

SECTION 103 - CONTRACT AWARD AND EXECUTION

103-01 CONTRACT AWARD.

The award of contract will be made only to the lowest responsible bidder as will best promote the public interest as provided by Section 38 of the Highway Law. The lowest bid will be determined by the Commissioner on the basis of gross sum for which the entire work will be performed, arrived at by a correct computation of all contract pay items specified in the proposal, at the unit prices stated in the proposal.

The Department reserves the right to reject any proposal deemed non-responsive, or any contractor deemed non-responsive, and then, pursuant to Section 38 of the Highway Law, award to other than the low bidder, or waive minor informalities if, in its opinion, the best interest of the State will thereby be promoted.

The Commissioner reserves the right to reject any proposal in which any of the bid prices are unbalanced to the potential detriment of the Department. An unbalanced bid is considered to be one containing lump sum or unit bid prices which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the work in question.

As a condition of award, the Contractor shall submit a completed Form CCA-1, *New York State Uniform Contracting Questionnaire* to the Contract Management Bureau. If requested by the Department, the bidder shall present additional evidence of ownership, corporate structure, ability and financial standing, as well as a statement as to equipment.

For contracts subject to A+B Bidding, the lowest bid will be determined by the Commissioner on the basis of the gross sum, which will be arrived at by a correct computation of all contract pay items specified in the proposal at the unit prices stated in the proposal (A portion), plus the total number of calendar days proposed by the bidder to complete the portion of work to which the incentive/disincentive is applicable, times the unit cost (B portion).

For contracts containing steel and/or iron, award of the contract will be made to the lowest responsible bidder who submits the lowest total bid based on furnishing domestic steel unless such total bid exceeds the lowest total bid based on furnishing foreign steel by more than 25 percent, in which case award will be made to the lowest responsible bidder based on furnishing foreign steel. The Bidder shall submit a bid based on permanently incorporating only domestic steel and/or iron materials in the construction of the contract. The Bidder may also submit a bid based on being allowed to permanently incorporate foreign steel and/or iron materials into the work of the contract. If the Bidder chooses to submit a bid based on the use of foreign steel and/or iron materials, the Bidder shall purchase an additional contract proposal and shall legibly print the following in ink on the proposal cover and at the bottom of the proposal sheet which contains the phrase "Total or gross sum written in words": TOTAL

BID BASED ON USING FOREIGN STEEL AND/OR IRON MATERIALS. When bids are submitted based on domestic and foreign steel and/or iron materials, both bids shall be submitted in the same envelope.

For contracts containing structure paint removal and painting work except for: bridge superstructure removal and other demolition work under Section 202; paint removal that is incidental to the main work under an item; localized paint removal from structural steel necessary for safe progress of other work on the structural steel; localized painting of bare structural steel; and containment for localized steel repair and painting; as a condition of award, Contractors and/or Subcontractors performing structure paint removal and painting work shall be certified in accordance with the following requirements of the Painting Contractor Certification Program (PCCP), of the Steel Structures Painting Council (SSPC): QP-1, Standard Procedure for Evaluating Qualifications of Painting Contractors: Field Application to Complex Industrial Structures; QP-2, Standard Procedure for Evaluating Qualifications of Painting Contractors To Remove Hazardous Paint.

In lieu of SSPC/PCCP certification, the Contractor shall provide documentation that demonstrates that the low bidder has established equivalent processes and procedures conforming to the standards set forth in the procedures for SSPC/PCCP QP-1 and QP-2. The documentation shall be reviewed and approved by a Professional Engineer experienced in structural painting operations selected by the Contractor and approved by the Department. The cost for the review and approval shall be paid by the Contractor.

103-02 EXECUTION OF CONTRACT.

The person or persons whose proposal is accepted shall execute the contract and comply in all respects with the statutory provisions relating to the contract within ten days of the date of the delivery of the contract form. A sample of the standard contract agreement is shown in §103-06 *Sample Form of Contract Agreement*. In case of failure or refusal on the part of the bidder to deliver the duly executed contract to the Department within the ten day period herein mentioned, the amount of the deposit made may be forfeited and paid to the State of New York, Department of Transportation.

All of the following sections which have the word "Sample" in the title are samples of the contract documents executed by the Contractor as a part of contract award. The executed contract documents control and have precedence over the samples presented herein.

103-03 CONTRACT BONDS.

The Contractor shall provide the State with a Faithful Performance Bond and a Labor and Material Bond from a Surety Company listed on the US Department of the Treasury listing of Approved Sureties (Treasury Department Circular 570) and licensed to do business in New York State, and with a minimum rating by A.M. Best of (A-) in the "Best's Key Rating Guide." Treasury Department Circular 570 can be found on the US Department of the Treasury website at www.fms.treas.gov/c570/index.html. The Contractor shall procure and deliver bonds to the State and maintain them at its own expense and without expense to the State until contract final acceptance by the State. The Surety Company shall append a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).

For contracts subject to A+B Bidding, the total contract bid price will include only the "A" portion of the bid. For contracts containing Incentive/Disincentive provisions, Lane Rental provisions, or any similar provisions, the total contract bid price will exclude any incentive/disincentive, lane rental, or similar items.

A. Faithful Performance Bond. The Contractor shall provide a bond in the form prescribed by the Commissioner, shown in §103-07 Sample Form of Faithful Performance Bond, with sufficient sureties, approved by said Commissioner, guaranteeing that the Contractor will perform the work in accordance with the terms of the contract documents, and that it will commence and complete the work within the time prescribed in the contract, and that it will provide against direct or indirect damages that shall be suffered or claimed on account of such construction or improvement, during the time thereof, until the contract is accepted. The amount of the Faithful Performance Bond shall be 100% of the amount of the total contract bid price.

B. Labor And Material Bond. The Contractor shall provide a bond in the form prescribed by the Commissioner, shown in §103-08 Sample Form of Labor and Material Bond, with sufficient sureties, approved by said Commissioner, guaranteeing prompt payment of monies due all persons supplying the Contractor or Subcontractor with labor and materials employed and used in carrying out the contract, which bond shall inure to the benefit of the persons supplying such labor and materials. The amount of the Labor and Material Bond shall be 100% of the amount of the total contract bid price.

103-04 CANCELING AWARD.

The Department reserves the right to reject all proposals and advertise for new proposals, or proceed to do the work otherwise, if, in its opinion, the best interest of the State will thereby be promoted.

103-05 PARTNERING.

It is the Department's policy to use the principles of partnering to guide the management of construction contracts and the construction program, within the parameters covered by the laws, regulations and other policies that govern work in the public sector.

The partnering principles are intended to promote quality through continuous improvement at all stages of construction. The goal of the Department is to complete each contract in the most efficient, timely, safe, and cost effective manner, to the mutual benefit of the Contractor and the Department, meaning a quality contract delivered on time, within budget, and without significant disputes.

Partnering is defined as those actions taken to include all parties with an appropriate and vested interest in the management of a transportation project such that it is completed in the most efficient, timely, safe, and cost effective manner for the mutual benefit of all concerned. Those actions include, but are not limited to, communication, organization, establishing goals, continuous improvement, problem identification, conflict resolution, and managing change. Interested parties may include, but are not limited to, the Department, the Contractor, Subcontractors, Fabricators, Material Suppliers, the community within which the project is constructed, the community served by the project, Federal, State and local government or other public agencies, and utilities.

None of the actions identified as part of, or taken in the course of partnering shall be construed to alter, modify, delete or waive any of the provisions or requirements of the Department's Specifications or any applicable laws or regulations.

The Department with the Contractor will manage each contract in a cooperative manner utilizing the following principles of partnering:

- establish communications with all involved parties early in the partnering process;
- establish a relationship of shared trust, equity, and commitment;
- develop strategies for identifying mutual goals;
- develop strategies for timely communications and decision making;
- establish process for timely response to changes or variations in field conditions;
- solve potential problems, at the lowest level, before they create a negative impact;
- encourage the use of products, technology and processes that provide a demonstrated level of improved quality; and
- develop a plan for periodic joint evaluation based on mutually agreed goals.

The specifications are to be implemented in an equitable fashion that recognizes the problems that are inherent in construction, addresses the different-than-expected field conditions, resolves disputes in open communications manner, and makes contract adjustments in a timely, and fair manner consistent with the terms of the contract. These specifications are intended to fairly allocate risk, resulting in a balanced contractual approach to risk-sharing. The Department will provide information relevant to preparation of a bid for the contract, and in connection with submission of its bid, the Contractor has the right to rely on information provided by the Department in the contract documents.

A. Formal Partnering. Generally, an item for formal partnering will be included in the contract proposal for large, more complex contracts. In addition, the Department will accept requests by successful low bidders to incorporate formal partnering on any contract that requires coordination and cooperation with third parties such as Subcontractors, suppliers, utility companies and railroads, or as otherwise desired by the Contractor.

B. Informal Partnering. The Department is willing to informally partner with the Contractor on all other contracts. Informal partnering is defined as the application of partnering principles to the management of the contract by the mutual agreement of the interested parties. Although the principles of partnering are to be applied, there is no fixed organization or structure adopted for that purpose.

103-06 SAMPLE FORM OF CONTRACT AGREEMENT.

STATE OF NEW YORK
 DEPARTMENT OF TRANSPORTATION
 AGREEMENT

Contract No.
 County

THIS AGREEMENT, entered into this _____ day of _____, 20____, by THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "State", acting by and through the Department of Transportation, pursuant to the Highway Law, and
 an individual conducting business as
 a partnership, consisting of
 a corporation organized and existing under the laws of the State of _____
 the location of whose principal office is _____ hereinafter called the "Contractor".

WITNESSETH: That the State and the Contractor, for the consideration hereinafter named agree as follows:

ARTICLE 1. WORK TO BE DONE. The Contractor shall (a) furnish all the materials, appliances, tools and labor of every kind required, and construct and complete in the most substantial and skillful manner, the construction, improvement or reconstruction of the project on or before the completion date of the _____ day of _____, 20 ____ as further described in Article 4, and as generally identified and shown on the contract plans entitled:

in accordance with the "Standard Specifications" of the New York State Department of Transportation, which contain the information for bidders; proposal form, contract agreement, and bonds; and payment items; and (b) do everything required by the Contract and/or Contract Documents as defined herein.

The Contractor further agrees their bid proposal is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived; an extension of Contract Completion Date will be granted; a labor dispensation will be granted; substitution of non-approved products, alternatives or claimed functional equivalents for specified construction materials and methods will be allowed; or any Value Engineering Change Proposals will be approved.

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT. The Contract (and Contract Documents) shall be deemed to include the advertisement for proposals; the contract proposal, including Special Notes and Special Specifications contained therein; the contractor's proposal; the Equal Employment Opportunity (EEO) participation goals; the Disadvantaged/Minority/Women's Business Enterprise (D/M/WBE) participation goals; the contract agreement; the base line data; the "Standard Specifications" including all addenda thereto identified in the contract proposal; the Standard Sheets; the plans; any amendments issued prior to the date of proposal submission, and all provisions required by law to be inserted in the contract whether actually inserted or not. Whenever separate publications are referenced in the Contract Documents it shall mean those, as amended, which are current on the date of advertisement for bids.

ARTICLE 3. EXAMINATION OF DOCUMENTS AND SITE. The Contractor agrees that before making its proposal it carefully examined the contract documents, together with the site of the proposed work, as well as its surrounding territory, and is informed regarding all of the conditions affecting the work to be done and labor and materials to be furnished for the completion of this contract, including the existence of poles, wires, pipes and other facilities and structures of municipal and other public service

corporations on, over or under the site, except latent conditions that meet the requirements of §104-03 *Differing Site Conditions*, and that its information was secured by personal and other investigation and research.

ARTICLE 4. DATE OF COMPLETION. The Contractor further agrees that it will begin the work herein embraced within ten days of the effective date hereof, unless the consent of the State, in writing, is given to begin at a later date, and that it will prosecute the same so that it shall be entirely completed and performed on or before the completion date shown in Article 1.

No extension beyond the date of completion fixed by the terms of this contract shall be effective unless in writing signed by the State. Such extension shall be for such time and upon such terms and conditions as shall be fixed by the State, which may include the assessment of liquidated damages and a charge for engineering and inspection expenses actually incurred upon the work, including engineering and inspection expenses incurred upon the work by railroad companies on contracts for grade crossing elimination. Notice of application for such extension shall be filed with the Regional Director of the Region within which the highway under construction is located at least fifteen days prior to the date of completion fixed by the terms of this agreement.

ARTICLE 5. ALTERATIONS AND OMISSIONS. The said work shall be performed in accordance with the true intent and meaning of the contract documents without any further expense of any nature whatsoever to the State other than the consideration named in this agreement.

The State reserves the right, at any time during the progress of the work, to alter the plans or omit any portion of the work as it may deem reasonably necessary for the public interest- making allowances for additions and deductions with compensation made in accordance with the Standard Specifications, for this work without constituting grounds for any claim by the contractor for allowance for damages or for loss of anticipated profits, or for any variations between the approximate quantities and the quantities of the work as done.

ARTICLE 6. NO COLLUSION OR FRAUD. The Contractor hereby agrees that the only person or persons interested as principal or principals in the bid or proposal submitted by the Contractor for this contract are named therein, and that no person other than those mentioned therein has any interest in the above mentioned proposal or in securing of the award, and that this contract has been secured without any connection with any person or persons other than those named, and that the proposal is in all respects fair and was prepared and the contract was secured without collusion or fraud and that neither any officer nor employee of the Department of Transportation has or shall have a financial interest in the performance of the contract or in the supplies, work or business to which it relates, or in any portion of the profits thereof. (See also §139-a and §139-b of the State Finance Law referred to in the Standard Specifications which are made a part of this contract.)

ARTICLE 7. CONTRACT PAYMENTS. As the work progresses in accordance with the contract and in a manner that is satisfactory to the State, the State hereby agrees to make payments to the Contractor therefore, based upon the proposal attached hereto and made a part hereof, as follows: The State shall once in each month and on such days as it may fix, determine the quantity of work completed and of material which has actually been put in place in accordance with the terms and conditions of the contract, during the preceding month, and compute the value thereof and pay to the Contractor the monies due as provided in §38(7) of the Highway Law. No monthly payment shall be rendered unless the value of the work completed equals 5% of the contract amount or \$1,000, whichever is the lesser. Semimonthly payments may be rendered provided (a) the value of the work performed in two successive weeks is more than \$50,000 or (b) the Commissioner of Transportation deems it to be in the best interests of the State to do so. The Contractor shall not hold any retainage from any Subcontractor.

ARTICLE 8. NO PAYMENT DUE TO CONTRACTOR'S NON-COMPLIANCE. It is further agreed that so long as any lawful or proper direction concerning the work or material given by the Commissioner of Transportation, or his/her representative, shall remain uncomplied with, the Contractor shall not be entitled to have said contract payment processed, nor shall any contract payment(s) be processed for work done or material furnished until such lawful or proper direction aforesaid has been fully and satisfactorily complied with.

ARTICLE 9. FINAL ACCEPTANCE OF WORK. When in the opinion of the Regional Director a Contractor has fully performed the work under the contract, the Regional Director shall recommend to the Commissioner of Transportation the acceptance of the work so completed. If the Commissioner accepts the recommendation of the Regional Director, he/she shall thereupon by letter notify the Contractor, with copies to other interested parties, of such acceptance. Prior to the final acceptance of the work by the Commissioner or his/her designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance.

Final acceptance shall be final and conclusive except for defects not readily ascertainable by the Department, actual or constructive, fraud, gross mistakes amounting to fraud or other errors which the Contractor knew or should have known about as well as the Department's rights under any warranty or guarantee. Final acceptance may be revoked by the Department at any time prior to the issuance of the final check by the Comptroller upon the Department's discovery of such defects, mistakes, fraud or errors in the work.

ARTICLE 10. FINAL PAYMENT. After the final acceptance of the work, the Engineer shall prepare a final agreement of the work performed and the materials placed and shall determine the value of such work and materials under and according to the terms of the contract. This final agreement shall be certified, as to its correctness, by the Engineer. Upon approval of such final agreement by the Regional Director, it shall be submitted to the Commissioner for final approval. The right, however, is hereby reserved to the Commissioner to reject the whole or any portion of the final agreement, should the said certificate of the Engineer be found or known to be inconsistent with the terms of the agreement or otherwise improperly given. All certificates upon which partial payments may have been made, shall be subject to correction in the final certificate or final agreement.

ARTICLE 11. RIGHT TO SUSPEND WORK AND CANCEL CONTRACT. It is further mutually agreed that if at any time during the prosecution of the work the Commissioner of Transportation shall determine that the work upon the contract is not being performed according to the contract or for the best interest of the State, the execution of the work by the Contractor may be temporarily suspended by the Commissioner of Transportation, who may then proceed with the work under his/her own direction in such manner as will accord with the contract specifications and be for the best interests of the State; or he/she may terminate the Contractor's employment under the contract while it is in progress, and thereupon proceed with the work, in affirmance of the contract, by contract negotiated or publicly let, by the use of his/her own forces, by calling upon the surety to complete the work in accordance with the plans and specifications or by a combination of any such methods; or he/she may cancel the contract and either readvertise or relet as provided in Section 38 of the Highway Law, or complete the work under its own direction in such a manner as will accord with the contract specifications and be for the interests of the State; any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the Contractor failing to perform the work or its surety; all in pursuance of the provisions of Section 40 of the Highway Law.

Whenever the State determines to suspend or stop work under the contract, a written notice sent by mail to the Contractor at its address and to the sureties at their respective addresses, shall be sufficient notice of its action in the premises.

ARTICLE 12. DETERMINATION AS TO VARIANCES. In any case of any ambiguity in the plans, specifications or maps, or between any of them, the matter must be immediately submitted to the Commissioner, who shall adjust the same, and his/her decision in relation thereto shall be final and conclusive upon the parties.

ARTICLE 13. SUCCESSORS AND ASSIGNS. This agreement shall bind the successors, assigns and representatives of the parties hereto.

ARTICLE 14. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with §139-h of State Finance Law, the Contractor hereby promises, asserts and represents that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating or shall participate in an international boycott in violation of the provisions of the United States Export

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Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, or the effective Regulations of the United States Department of Commerce promulgated under either act.

It is understood further that the State in awarding a contract does so in material reliance upon the promise and representation made by the Contractor in the forgoing paragraph and that such contract shall be rendered forfeit and void by the State Comptroller if subsequent to the bid execution date, the Contractor or such owned or affiliated person, firm, partnership or corporation has been convicted of a violation of the aforesaid Acts or Regulations or has been found upon final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated such Acts or Regulations.

The Contractor agrees to and shall notify the Commissioner of Transportation, the Director of the Contract Management Bureau and State Expenditures in the Office of the State Comptroller of any such conviction or final determination of violation within five (5) days thereof.

IN WITNESS WHEREOF, this agreement has been executed by the State, acting by and through the Commissioner of Transportation, and the Contractor or its appointed representative, who has executed this agreement on the day and year first written above.

Recommended by _____ Contract No. _____

(Signature) Agency Certification
"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of the contract."
ATTORNEY GENERAL:

Department of Transportation _____ Date

Approved _____
(Date) (Signature) (Title)

For State Comptroller (Contractor Firm Name)

THIS CONTRACT IS NOT TO BE EXECUTED OR BECOME EFFECTIVE UNTIL IT SHALL FIRST BE APPROVED BY THE STATE COMPTROLLER AND FILED IN HIS/HER OFFICE. (Section 112, State Finance Law.)

(Acknowledgment of individual contractor)

STATE OF NEW YORK ss. :
COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same.

Notary Public

(Acknowledgment of co-partnership contractor)

STATE OF NEW YORK ss. :
COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person who executed the foregoing instrument, who, being duly

sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____, consisting of himself/herself and _____ and that he/she executed the foregoing instrument and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm for the uses and purposes mentioned therein.

Notary Public

(Acknowledgment of contractor, if a corporation)

STATE OF NEW YORK ss. :
COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known, and known to me to be the person who being duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of the _____ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

103-07 SAMPLE FORM OF FAITHFUL PERFORMANCE BOND.

KNOW ALL PERSONS BY THESE PRESENTS, that _____
(Name of Contractor)

(Address)

(hereinafter called the "Principal") and the _____ a corporation created and existing under the laws of the State of _____ having its principal office in the City of _____ (hereinafter called the "Surety") are held and firmly bound unto the People of the State of New York (hereinafter called the "State"), by and through its Department of Transportation (hereinafter called the "Department"), in the full and just sum of [*Total Contract Bid Price or "A Portion" of Total Contract Bid Price* Dollars (\$.....)] good and lawful money of the United States of America, to the payment of which said sum of money, well and truly to be made and done the said Principal binds itself, its heirs, executors, administrators or assignees and the said Surety binds itself, its successors or assigns, jointly and severally, firmly by these presents:

WHEREAS, said Principal has entered into a certain written contract on the ____ day of _____, 20 ____, with the Department of Transportation, 50 Wolf Road, Albany, New York 12232.

(Project Description)

In the county/counties of _____

which constitutes Contract No. _____

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall well, truly and faithfully perform the work in accordance with the terms of the contract and as said contract may be modified or amended, and with the plans and specifications, and will commence and complete the work within the time prescribed in the contract, and shall protect the said State against, and pay any excess of cost as provided in said contract, and all amounts, damages, costs and judgments which may be recovered against said State or its officers or agents of which the said State may be called upon to pay to any person or corporation by reason of any damages, direct or indirect, arising or growing out of the doing of said work, or from the negligence, nonfeasance, misfeasance or malfeasance of any officer, agent or employee of the State or Department thereof, or suffered or claimed on account of said public works contract during the time thereof or the manner of doing the same, or the neglect of the said Principal, or its agents, or servants, or the improper performance of the said work by the said Principal, or its agents, or servants, or

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from any other cause, then this obligation shall be null and void, otherwise to remain in full force and virtue.

In the event of a failure of performance of the contract by the Principal, which shall include, but not be limited to, any breach or default of the contract by the Principal, or in case said contract is forfeited by the Principal in the manner provided for in the contract and the said Surety, for value received, hereby stipulates and agrees, if requested to do so by the State, has the option to either remedy the default, or breach or forfeiture of the Principal or take charge and fully perform and complete the work, mentioned and described in said contract and specifications, pursuant to the terms, conditions and covenants thereof and as may be amended, at its own expense. The procedure by which the Surety undertakes to discharge its obligations under the bond shall be subject to the advance written approval of the Department. If the Surety completes the contract, it shall be paid for the actual items of work performed in accordance with the Principal's contract terms and prices. In this event the Surety assumes the rights and obligations of the Principal.

It shall be the duty of the Surety to give unequivocal notice in writing to the Department, within forty-five (45) days after receipt of written notice from the Department to the Surety, of the Surety's election to remedy default(s) or breach(es) or forfeiture(s) promptly or to perform and fully complete the contract promptly as provided herein, time being of the essence of this bond. In said notice of election, the Surety shall state the date on which the remedy or performance shall commence. During the period between the Department's notice and Surety's performance of the contract or remedy of the default, breach or forfeiture, the Surety shall be liable for and agrees to pay any and all reasonable and necessary costs as determined by the Department to maintain the contract site safe and convenient to the public.

It shall also be the duty of the Surety to give prompt notice in writing to the Department upon the completion of the remedy and/or correction of each breach or default or completion of the contract. The Surety shall not assert solvency of its Principal or its Principals denial of default as justification for its failure to give notice of election or for its failure to promptly remedy the breach or default or to complete the contract.

In the event the Surety shall fail to exercise either option or to act promptly then the Department shall give ten (10) days notice of such failure, both to Principal and Surety, and after the expiration of the 10 days the Department may cause the work to be completed pursuant to Section 40 of the Highway Law, and the Surety and the Principal shall be jointly and severally liable for the amount of excess cost of completing the contract work beyond the amounts remaining for this contract adjusted for the work actually performed. When the cost of completion of performance by the Obligee is estimated, the Principal and Surety shall pay, free from all liens and encumbrances, the State determined estimated completion costs above the funds remaining for this contract, to the Department within 30 days of receipt of the estimate. Adjustment of the Department's estimated completion cost will be made upon the Department's final acceptance of the work and appropriate refunds, if any, will be promptly made to the Surety. Any actual costs in excess of the estimated price shall be paid to the Department promptly on demand. Additionally, Principal and Surety shall be liable for any applicable liquidated and/or engineering costs or damages.

In addition, the said Principal and Surety further agree, as part of this obligation, to pay all damages of any kind to person or property that may result from a failure in any respect to perform and complete said contract including, but not limited to costs necessary to protect the traveling public or to avoid inconvenience to the traveling public, (liquidated damages as provided above) all repair and replacement costs necessary to rectify construction errors, architectural and engineering costs and fees, all consultant fees, all testing and laboratory fees, and all interest, legal fees and litigation costs incurred by the Department.

And the said Surety thereby stipulates and agrees that no change, extension, alteration, deduction or addition in or to the terms of the said contract or the plans or specifications accompanying the same, shall in any way affect the obligations of said Surety of its bond.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their/its) hand and the said Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered this ____ day of _____, 20____, in the presence of:

_____)
(Company)

By _____) Principal
 (Signature)

_____)
 (Title)

_____)
 (Company)

By _____) Surety
 (Signature)

_____)
 (Title of Authorized Officer)

(The Surety Company shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).)

(Acknowledgment of principal, unless it be a corporation)

STATE OF NEW YORK ss. :
 COUNTY OF _____

On this ____ day of _____ 20 __, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

 Notary Public

(Acknowledgment of principal, if a corporation)

STATE OF NEW YORK ss. :
 COUNTY _____

On this ____ day of _____ 20 __, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of the _____ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

 Notary Public

(Acknowledgment of Surety Company)

STATE OF NEW YORK ss. :
 COUNTY OF _____

On this ____ day of _____ 20 __, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of the _____ the corporation described in the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

 Notary Public

State Of New York Office of the Attorney General

I hereby approve the foregoing contract and bond as to form and manner of execution.

103-08 SAMPLE FORM OF LABOR AND MATERIAL BOND.

KNOW ALL PERSONS BY THESE PRESENTS, that _____
(Name of Contractor)

(Address)

(hereinafter called the "Principal") and the _____
a corporation created and existing under the laws of the State of _____ having its principal
office in the City of _____ (hereinafter called the "Surety"), are held and firmly bound
unto the People of the State of New York (hereinafter called the "State") by and through its Department of
Transportation (hereinafter called the "Department"), in the full and just sum of [*Total Contract Bid Price*
or the "A Portion" of Total Contract Bid Price Dollars (\$.....)] good and lawful money of the
United States of America, for payment of which said sum of money, well and truly to be made and done,
the said Principal binds itself, its heirs, executors and administrators, successors and assigns, and the said
Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:

WHEREAS, said Principal has entered into a certain written contract, on the ____ day of
_____, 20__ with the Department of Transportation, 50 Wolf Road, Albany, New York 12232.

(Project Description)

In the county/counties of _____ which constitutes Contract No. _____

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall promptly
pay all monies due to all persons furnishing labor or materials to it or its Subcontractors in the
prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to
remain in full force and effect;

Provided, however, that the Comptroller of the State of New York having required the said Principal
to furnish this bond in order to comply with the provisions of Section 137 of the State Finance Law, all
rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance
with the provisions, conditions and limitations of said Section to the same extent as if they were copied at
length herein; and

Further, provided, that the place of trial of any action on this bond shall be in the county in which the
said contract was to be performed, or if said contract was to be performed in more than one county then in
any such county, and not elsewhere.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their, its) hand and the said
Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered ____ day of _____ 20__ in the presence of

(Company))

By _____) Principal
(Signature)

(Title))

(Company))

By _____) Surety
(Signature)

_____)
 (Title of Authorized Officer)

(The Surety Company shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).)

(Acknowledgment of principal, unless it be a corporation)

STATE OF NEW YORK ss. :
 COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

 Notary Public

(Acknowledgment of principal, if a corporation)

STATE OF NEW YORK ss. :
 COUNTY _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of the _____ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

 Notary Public

(Acknowledgment of Surety Company)

STATE OF NEW YORK ss. :
 COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of the _____ the corporation described in the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

 Notary Public

State Of New York Office of the Attorney General

I hereby approve the foregoing contract and bond as to form and manner of execution.

SECTION 104 - SCOPE OF WORK

104-01 WORK REQUIRED.

The Contractor shall begin work within ten days of the date of the award notification by the Department, unless written consent of the Department is given to begin at a later date. The Contractor

shall perform all work enumerated under the terms of the contract and shall protect all adjoining properties, utility facilities and existing highway facilities within the right of way. The Contractor shall repair and/or replace any property, utility facility or highway facility damaged or destroyed by it or its employees through construction operations, within and adjacent to the right of way.

The Contractor shall coordinate the work of its Subcontractors, Manufacturers, Fabricators and Material Suppliers. Their operations shall be arranged and conducted so that delays will be avoided. Where the work of the Contractor, or Subcontractors, overlaps or dovetails with that of other Contractors, materials shall be delivered and operations shall be conducted so as to carry on the work continuously in an efficient and workmanlike manner.

During the life of this contract, Utilities may make changes in their facilities. These changes may be made by the Utility employees or by contract within the limits of or adjacent to this contract and may be temporary and/or permanent.

Delays or oversights on the part of the Contractor, Subcontractors or Utilities in properly completing any work, thereby requiring the removal and replacement of work already in place, will not be the basis for a claim of extra compensation. Such work will be performed at the cost and expense of the responsible Contractor, Subcontractor or Utility. Reference is made to General Obligations Law §11-102 which concerns the interference and/or delay of the Contractor's progress of work by Utilities.

104-02 CHANGES, CONTINGENCIES, EXTRA WORK AND DEDUCTIONS.

The provisions of Article 5, *Alterations and Omissions* of the contract agreement shall apply. Whenever the Department determines that from any unforeseen cause the terms of any contract should be altered to provide for changes, contingencies, extra work, or the deletion of work an order-on-contract may be issued to the Contractor shall promptly proceed with the performance of the work and the furnishing of the materials and equipment necessary for its accomplishment in accordance with the pertinent specifications. Such changes in quantities and alterations shall not invalidate the contract nor release the Surety, and the Contractor shall perform the work as altered.

No instructions, either written or verbal from any Department employee or agent shall be construed as an order for changes until receipt by the Contractor of written notification that an order-on-contract has been approved by the Department, or written notification from the Engineer that changes in the work are eligible and authorized for payment in accord with Section 697 *Field Change Order*. The Contractor may proceed with the work in advance of the approved order-on-contract if the Contractor has received an approved *Authorization of Extra Work*.

104-03 DIFFERING SITE CONDITIONS.

In accordance with 23 CFR 635.109(a)(1):

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party of the specific differing site conditions before the site is further disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the site conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor, of the determination whether or not an adjustment to the contract is warranted.

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

The Department will administer the above Federal regulations as follows:

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, the party discovering such conditions shall promptly notify the other party of the specific differing site conditions before the site is further disturbed and before the affected

work is performed, with subsequent written notice to be provided later. The Contractor shall comply with the notice and recordkeeping provisions of §104-06 *Notice and Recordkeeping*.

The Contractor or the State, as the case may be, must make written notice to the other party of the existence of apparent subsurface or latent physical conditions if that party wishes to adjust the contract price or time of performance, including direct costs and/or time related compensation, if applicable. Such notice shall be given within ten (10) work days of the time at which the party had knowledge, or should have had knowledge of the differing site condition. The Department will have no liability and no adjustment will be made for any damages which accrued more than ten (10) work days prior to the filing of such a notice with the Engineer.

Upon written notice, the Engineer will investigate the site conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of the work, an adjustment, excluding anticipated profits, will be made to the contract. The Engineer will make an initial response in writing to the Contractor, within 15 work days, with a determination whether or not an adjustment to the contract is warranted. Situations requiring examination of the site or input from other Department personnel may require additional time to resolve. No contract adjustment will be allowed unless the Contractor has provided the required written notice, or written notice was provided to the Contractor by the State.

The Contractor shall keep daily records and make reports of all labor, material and equipment used in connection with such work and the cost thereof as specified in §109-05C. *Force Account Reports*. Compensation for increased costs of the work resulting from the differing site conditions will be made in accordance with §109-05 *Extra Work and Time Related Compensation*. Compensation for time related costs, if any, will be made in accordance with §109-05D. *Time Related Dispute Compensation*.

104-04 SIGNIFICANT CHANGES IN THE CHARACTER OF WORK.

In accordance with 23 CFR 635.109(a)(3):

The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the Surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of work under the contract, whether such alterations or changes are in themselves significant changes in the character of work, or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made by the Department, either for or against the Contractor, in such amount as determined to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

The term 'significant change' shall be construed to apply only to the following circumstances: when the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or when a Major Item of work, as defined elsewhere in the contract, is increased in excess of 125 percent, or decreased below 75 percent of the original contract quantity. Any allowance for a change in unit price shall apply only to that portion of work in excess of 125 percent of the original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

The Department will administer the above Federal regulations as follows:

The Department may make, in writing, at any time during the work, any necessary changes in quantities and alterations to the work in order to satisfactorily complete the project. If the Contractor or the Department discovers a change that constitutes a significant change in the character of work as defined below, the party discovering the change shall promptly provide the other party written notice of the significant change in the character of work before additional work is performed. The Contractor shall comply with notice and recordkeeping provisions of §104-06 *Notice and Recordkeeping*.

The Contractor or the State, as the case may be, must make written notice to the other party of the existence of an apparent significant change in the character of work if that party wishes to adjust the

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contract price or time of performance, including direct costs and/or time related compensation, if applicable. Such notice shall be given within ten (10) work days of the time at which the party had knowledge, or should have had knowledge of an event, matter or occasion which results in a significant change in the character of work. The Department will have no liability and no adjustment will be made for any damages which accrued more than ten (10) work days prior to the filing of such a notice with the Engineer.

Upon written notice, the Engineer will investigate the changes and if it is determined that the alterations or changes in quantities significantly change the character of work, whether such alterations or changes are in themselves significant changes in the character of work, or by affecting other work, cause such other work to become significantly different in character, an adjustment, excluding anticipated profits, will be made to the contract. The Engineer will make an initial response in writing to the Contractor, within 15 work days, with a determination whether or not an adjustment to the contract is warranted. Situations requiring examination of the site or input from other Department personnel may require additional time to resolve. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made by the Department, either for or against the Contractor, in such amount as determined to be fair and equitable. No contract adjustment will be allowed unless the Contractor has provided the required written notice, or written notice was provided to the Contractor by the State.

The Contractor shall keep daily records and make reports of all labor, material and equipment used in connection with such work and the cost thereof as specified in §109-05C. *Force Account Reports*. Compensation for increased costs of the work resulting from significant changes in the character of work will be made in accordance with §109-05 *Extra Work and Time Related Compensation*. Compensation for time related costs, if any, will be made in accordance with §109-05D. *Time Related Dispute Compensation*.

A. Character of Work. The term 'significant change' shall be construed to apply only when the character of the work differs materially in kind or nature from that involved or included in the original proposed construction.

B. Major Items. The term 'significant change' shall be construed to apply to Major Items (as defined in §101-02 *Definitions of Terms*) only when the quantity of a Major Item is more than 125%, or is less than 75% of the original contract quantity. Any allowance for a change in the unit price shall apply only to that portion of work in excess of 125% of the original contract item quantity, or to the actual amount of work performed if the quantity decreases below 75% of the original contract item quantity. The Contractor or the State, as the case may be, must make written notice to the other party of the "significant change" in the quantity of a major item if that party wishes to adjust the contract price or time of performance. Knowledge of a "significant change" in quantity could result from receipt of an order on contract (approved or unapproved), a letter directing a change in the contract work, review of plan details and estimates, review of work completed or progress payment quantities, or a combination of the above. Payment for major items will be limited in accordance with §109-02 *Payment for Altered Quantities*.

C. Minor Items. The term 'significant change' shall be construed to apply to Minor Items (as defined in §101-02 *Definitions of Terms*) only when extra work both (1) increases the quantity of a Minor Item to more than 200% of the original contract quantity and (2) results in an increase of more than \$1,000 from the original contract amount. Any allowance for a change in the unit price shall apply only to that portion of work both in excess of 200% of the original contract item quantity, and in excess of \$1,000 from the original contract amount.

D. Composite Items. Composite items, for the purposes of this subsection, consist of rock and non-rock components, and are limited to unclassified excavation and trench and culvert excavation. The term 'significant change' shall be construed to apply only if the composite item is a Major Item, any individual component of the composite is less than 75% or more than 125% of the quantity stated in the Earthwork Summary Sheet used by the Department in preparing the contract, and the reasonable costs of the composite item either increases or decreases as a result of the change. The adjustment in payment shall be based on variance in quantity of the individual components from the